This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

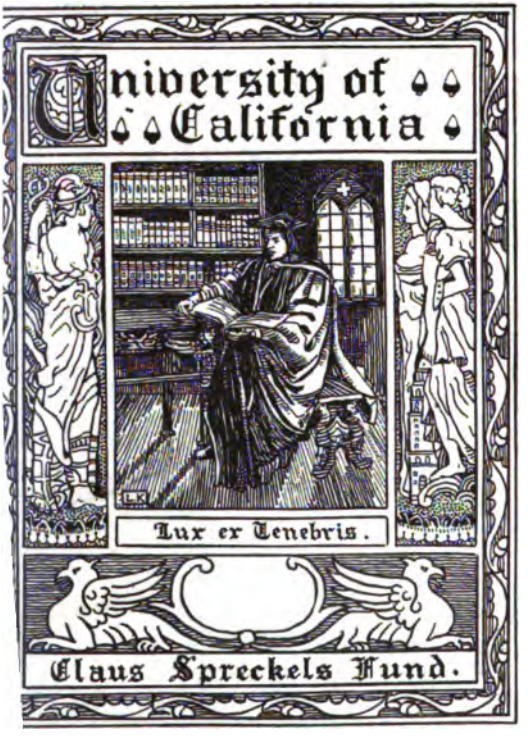
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

YC 85850

Digitized by Google



Digitized by Google

Digitized by Google

Digitized by Google

THE WORKMEN'S COMPENSATION ACT, 1906

Digitized by Google

Digitized by Google

THE WORKMEN'S COMPENSATION ACT, 1906

BY

V. R. ARONSON, M.A., B.C.L.

OF THE INNER TEMPLE AND MIDLAND CIRCUIT, BARRISTER-AT-LAW

T. FISHER UNWIN

LONDON
ADELPHI TERRACE

LEIPSIC
INSELSTRASSE 20

1909

Digitized by Google

Digitized by Google

THE WORKMEN'S COMPENSATION ACT, 1906

BY

V. R. ARONSON, M.A., B.C.L.

OF THE INNER TEMPLE AND MIDLAND CIRCUIT, BARRISTER-AT-LAW

T. FISHER UNWIN

LONDON ADELPHI TERRACE

LEIPSIC INSELSTRASSE 20

1909

Digitized by Google

HD 7816
.G7A8

(All rights reserved.)

Digitized by Google

OF THE
UNIVERSITY
OF
CALIFORNIA

PREFACE

THE object of this book is to present a complete view of the law of Workmen's Compensation as contained in the Act of 1906, and in the decisions of the English and Scotch courts both prior and subsequent to that Act.

Eighteen months have now elapsed since the Act came into force, and during that time many cases have been decided by the Court of Appeal. These cases deal mainly with three points, each of them a fruitful subject of controversy: (i) the definition of "workman"; (ii) the definition of "earnings"; and (iii) the method of calculating "average weekly earnings" where the period of employment has been too short or irregular for a true average to be taken.

As to the definition of "workman," the dispute has ranged round the meaning of the word "casual"; for it is enacted that "workman" does not include a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business. Obviously some very fine distinctions have to be drawn. The employment of a charwoman who cleans a house daily in pursuance of a contract is clearly not of a casual nature; equally clearly the employment is of a casual nature if the charwoman has merely cleaned the house on several occasions in the past and may or may not be called on to do so in the future. Between these two positions lie very many difficult cases. The question was before the Court of Appeal in *Hill* v. *Begg* ([1908] 2 K.B. 802),

192570

Digitized by Google

where it was held that the employment was of a casual nature where a window cleaner came to a house from time to time to clean windows, but there was no contract of either permanent or periodic employment between the parties. Just the other side of the line is the case of *Dewhurst* v. *Mather* ([1908] 2 K.B. 754). There the applicant for compensation was a charwoman who was employed for a considerable period on Fridays and alternate Tuesdays. She came regularly on those days without special instructions. The Court held that the employment was not of a casual nature and awarded compensation. It may safely be predicted that many more cases will arise before this question is finally settled.

The definition of "earnings" has also been much discussed. A difficult point arises where part of the "earnings" consist of board and lodging given to the workman by his employer. Is this to be calculated on the basis of what the board costs the employer, what it would cost the workman to procure the same amount of comfort for himself, or what the workman would spend on his board if living away from his work? This point has been considered by the Court of Appeal in *Rosengvist* v. *Bowring* ([1908] 2 K.B. 109), and (indirectly) in *Dothie* v. *Macandrew* ([1908] 1 K.B. 803). The result of these cases may be summarised thus: the test of the money value of the board provided by the employer is not what the workman saves by the arrangement, but what the reasonable style of board provided by the employer would have cost the workman if he had had to purchase it himself; subject, however, to this qualification, that if a very luxurious allowance be made for the purposes of advertisement and not for the benefit of the workman, that would be a factor to be taken into consideration.

Another point on "earnings" occurs in the case where gratuities form a large part of the workman's receipts. In *Penn* v. *Spiers* ([1908] 1 K.B. 766) the Court of Appeal held that tips received by a waiter form part

Digitized by Google

of his earnings; but earnings do not include tips which are (*a*) illicit, or (*b*) encourage a breach of duty by the workman to his employer, or (*c*) are casual and sporadic and trivial in amount.

Finally, considerable difficulty has arisen in interpreting paragraph 2 of the First Schedule, which deals with the manner of computing "average weekly earnings." This paragraph provides that where a true average cannot be taken, owing to the short duration of the employment, regard may be had to the earnings of other workmen in the same grade and in the service of the same employer; or, if there are no such persons, to the earnings of workmen in the same grade employed in the same class of employment in the same district. This paragraph is somewhat vague; and it is fortunate for the public that its provisions have been exhaustively considered at an early stage in the history of the Act, in the case of *Perry* v. *Wright* ([1908] 1 K.B. 441). It was there decided that average weekly earnings must be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. But where it is impossible to compute the arbitrator must estimate them as well as he can, and in doing so may have regard to analogous cases. The meaning of the word "grade" was also considered, and it was pointed out that it does not involve or depend upon individual characteristics. Each grade must have good and bad members; and the arbitrator has first to decide to what grade the workman belongs, and then to find the average weekly earnings of that grade. Having done so, he must determine whether the qualities of the individual workman entitle him to a wage above or below such average.

This book has been arranged in a manner which, it is hoped, will make it useful to both lawyers and laymen. There is a short introduction dealing with the state of the law prior to 1906. Then follows a chapter in which the present Act is summarised and the various subjects placed in a logical order. This should enable

Digitized by Google

those unacquainted with the Act to look up quickly any point on which they require information.

The third and main portion of the book consists of a detailed examination of the Act taken section by section. It is believed that in this part are collected all the reported English decisions up to the end of 1908, and the great bulk of the Scotch ones. There are also a few Irish cases which decide points not yet dealt with in England.

In some instances it has been necessary to explain somewhat fully the provisions of the Act of 1897, in order that the changes brought about by the Act of 1906 may be properly appreciated (see Schedule I., paragraph 2).

In the appendices are set out all the numerous rules and orders made under the Act, the county court scales of fees, the Employer's Liability Act, 1880, and the repealed Workmen's Compensation Acts, 1897 and 1900.

It may not be out of place to say a word about the far-reaching changes in the law effected by this Act, and about the points to which criticism has been mainly directed. In the first place it has been urged that, as a result of the Act, aged and infirm workmen will find it increasingly difficult to obtain employment. It may well be that the Act is used as a handle by employers who do not desire to employ aged workmen; but it is usual to insure against the liability to pay compensation, and the difficulty can then in most cases be met by taking the increased premium into account in fixing the wages.

Secondly, it is said that domestic servants should not have been included in the Act. A poor man who has neglected to insure may be ruined by an accident to his servant. In considering this point it is necessary to distinguish between the justice of the protection and the incidence of the burden. There is no reason why a domestic servant should not be afforded the same protection as other workmen, nor why his employer should not be under the same liability and subject to the same risks as other employers. The only distinction, in fact, is

Digitized by Google

that the employer of a domestic servant is supposed to be a person less likely to insure. Therefore, the only deduction from this argument is that a compulsory system of insurance against liabilities under this Act should be instituted. It may readily be admitted that such a system would be an improvement on the existing law; and possibly in time it may be adopted.

A third contention is that it is wrong to include illegitimate children in the class of dependants. It is said that it is now open to any woman to swear falsely that a deceased workman was the father of her child. It is, no doubt, true that in all legal proceedings he who commits perjury may reap an unjust reward; but the danger is no greater in proceedings by dependants under this Act than in any other litigation in which an important witness is dead. It is also urged that it is against public policy to include illegitimate children; but surely no man would be encouraged in immorality by the knowledge that his children would benefit in the improbable event of his death by accident.

There are some other points in which the policy of this Act is harder to defend. The first of these is the provision which enacts that, in the event of the workman's death or serious and permanent disablement, compensation must be paid even if the injury is due to his serious and wilful misconduct. The accident may be due to the workman's deliberate disobedience to orders, or to his drunkenness, or to other causes beyond the employer's control. The risk of such an accident is not due to the nature of the employment, nor is it possible for the employer to guard against it, and there is therefore no reason why he should be liable to pay compensation in such a case.

Again, the provision which relieves the parties from paying any court fees prior to the award seems to work badly. It gives a stimulus to speculative proceedings, and also places applicants for compensation in a better position than other county court litigants, although it is

Digitized by Google

believed that, as a whole, they are not a poorer class Workmen's claims are frequently fought by labour unions and similar bodies; and it is submitted that in such cases at least the ordinary fees should be paid.

Lastly, some sections of the Act are extremely hard to interpret. In particular is this the case with Section 4, dealing with sub-contracting (see the submission at p. 113 post). It is to be regretted that an Act which supersedes the notoriously ill-drafted Act of 1897 should not have been more clearly worded.

As against these deficiencies must be set the fact that a protection which has been found to work well in a few selected industries has now been extended to almost all workmen. That protection is founded on the principle, of which most people approve, that the industry itself should bear the loss caused by catastrophes which are due to the nature of the employment, and over which the workmen have in the main no control. Granted this principle, it must be admitted that the Act has done much to reduce the law on the subject to an intelligible system.

V. R. A.

GOLDSMITH BUILDING,
TEMPLE.
December, 1908.

Digitized by Google

CONTENTS

PAGE

TABLE OF CASES i

THE LAW PRIOR TO 1906 13

SUMMARY OF THE ACT 19

THE WORKMEN'S COMPENSATION ACT, 1906:—

Section I 47
Section II 91
Section III 104
Section IV 112
Section V 123
Section VI 128
Section VII 133
Section VIII 143
Section IX 156
Section X 158
Section XI 160
Section XII 164
Section XIII 165
Section XIV 186
Section XV 187
Sections XVI and XVII 190
Schedule I 191
Schedule II 235
Schedule III 267

APPENDIX A 271
The Workmen's Compensation Rules, 1907.

APPENDIX B 327
The Workmen's Compensation Forms, 1907.

APPENDIX C 417
Treasury Order regulating Fees in County Courts in Arbitrations under the Workmen's Compensation Act.

Digitized by Google

PAGE

APPENDIX D 421
Regulations made by the Chief Registrar of Friendly Societies under Sections 3 and 15 of the Workmen's Compensation Act.

APPENDIX E 434
Regulations made by the Secretary of State as to the Duties and Fees of Certifying Surgeons, and as to References to Medical Referees under Section 8 of the Workmen's Compensation Act.

APPENDIX F 453
Regulations made by the Secretary of State as to Examinations of a Workman by a Medical Practitioner provided and paid by the Employer under the Provisions of the First Schedule of the Workmen's Compensation Act.

APPENDIX G 454
Regulations made by the Secretary of State and the Treasury as to the Duties of Medical Referees under the Provisions of the First and Second Schedules of the Workmen's Compensation Act.

APPENDIX H 469
Regulations made by the Secretary of State under Section 12 of the Workmen's Compensation Act as to Returns to be furnished each year by Employers in certain Industries.

APPENDIX I 476
Order of the Secretary of State extending the Provisions of the Workmen's Compensation Act to certain Industrial Diseases.

APPENDIX J 479
The Workmen's Compensation Rules, 1908 (being an Amendment of certain of the Rules of June 1, 1907).

APPENDIX K 492
The County Court Scale of Costs.

APPENDIX L 519
The Workmen's Compensation Act, 1897.

APPENDIX M 532
The Workmen's Compensation Act, 1900.

APPENDIX N 533
The Employers' Liability Act, 1880.

INDEX 537

Digitized by Google

TABLE OF CASES

PAGE

Abram *v.* Southern [1903] A.C. 306 . . . 203
Allan *v.* Spowart, 8 F. 811 228
Anderson *v.* Baird, 5 F. 373 197
Andrew *v.* Failsworth Industrial Society [1904] 2 K.B. 32 67
Andrews *v.* Andrews and Mears [1908] 2 K.B. 567 . 122
Anslow *v.* Cannock Chase, *The Times*, Dec. 12, 1908 . 206
Appleby *v.* Horseley [1899] 2 Q.B. 521 . . . 202
Armitage *v.* Lancashire and Yorkshire Railway Co. [1902] 2 K.B. 178 66
Arroll *v.* Kelly, 7 F. 906 180
Ashworth *v.* Stanwix, 30 L.J.Q.B. 183 . . . 13
Atkinson *v.* Lumb [1903] 1 K.B. 861 . . . 122
Ayres *v.* Buckeridge [1902] 1 K.B. 57 . . . 200
Back *v.* Dick, Kerr & Co. [1906] A.C. 325 . . . 121
Bagnall *v.* Levinstein [1907] 1 K.B. 531 . . . 175
Bailey *v.* Plant [1901] 1 K.B. 31 . . . 88, 252
Bailey *v.* Plant, No. 2, 17 T.L.R. 449 . . . 251
Baird *v.* Birsztan, 8 F. 438 . . . 182, 195
Baird *v.* Higginbotham, 3 F. 673 86
Baird *v.* Kane, 7 F. 461 . . . . 213, 221
Bargewell *v.* Daniel, 98 L.T. 257 170
Barrett *v.* North British Railway, 1 F. 1139 . . 180
Bartlett *v.* Tutton & Sons [1902] 1 K.B. 72 . 200, 204
Bartonshill Coal Co. *v.* Reid, 3 Macq. 266 . . . 14
Beath and Keay *v.* Ness, 6 F. 168 227
Beckley *v.* Scott & Co. [1902] 2 I.R. 504 . . . 73
Bennett *v.* Wordie, 1 F. 855 97
Benson *v.* Lancashire and Yorkshire Railway Co. [1904] 1 K.B. 242 . . . . . 55, 58
Bevan *v.* Crawshay [1902] 1 K.B. 25 . . . 195

Digitized by Google

PAGE
Binning *v.* Easton, 8 F. 407 254
Bist *v.* London and South Western Railway [1907] A.C. 209 80
Blake *v.* Midland Railway Co. [1904] 1 K.B. 503 . 252, 253
Blovelt *v.* Sawyer [1904] 1 K.B. 271 . . . 60
Boardman *v.* Scott [1902] 1 K.B. 43 . . . 52
Boase Spinning Co. *v.* M'Avan, 38 S.L.R. 772 . . 224
Bound *v.* Lawrence [1892] 1 Q.B. 226 . . . 16
Bradbury *v.* Badworth Coal and Iron Co., *The Times*, March 17, 1900 227
Brintons, Ltd., *v.* Turvey [1905] A.C. 230 48, 53, 144, 155
Broderick *v.* London County Council [1908] 2 K.B. 807 . 53
Brooker *v.* Warren, 23 T.L.R. 201 81
Brown *v.* Cunningham, 6 F. 997 201
Brown *v.* Lochgelly Iron and Coal Co. [1907] S.C. 198 . 97
Bryce *v.* Connor, 7 F. 193 228
Brydon *v.* Stewart, 2 Macq. 30 57
Bryson *v.* Dunn and Stephens, 8 F. 226 . . 196, 226
Cadzow Coal Co. *v.* Gaffney, 3 F. 72 . . . 201
Caledon *v.* Kennedy, 8 F. 960 236
Callaghan *v.* Maxwell, 2 F. 420 . . . 68, 80
Cameron *v.* Nystrom [1893] A.C. 308 . . . 14
Cammick *v.* Glasgow Iron and Steel Co., 4 F. 198 252, 253
Campbell *v.* Fife Coal Co., 5 F. 170 . . . 201
Carter *v.* Drysdale, 12 Q.B.D. 91 94
Case *v.* Colonial Wharves, 53 W.R. 514 . . . 201
Cass *v.* Butler [1900] 1 Q.B. 777 117
Castle *v.* Atkinson [1905] 1 K.B. 336 . . 228, 231
Caton *v.* Summerlee and Mossend Iron Co., 4 F. 989 . 60
Cattermole *v.* Atlantic Transport Co. [1902] 1 K.B. 204 . 88, 246
Challis *v.* London and South Western Railway Co. [1905] 2 K.B. 154 . . . . . 62, 66
Chambers *v.* Whitehaven Harbour Commissioners [1899] 2 Q.B. 132 120
Chandler *v.* Smith [1899] 2 Q.B. 506 . 69, 70, 210, 251
Chartered Bank of India *v.* Netherlands India Steam Navigation Co., 10 Q.B.D. 534 . . . 138
Clark *v.* The Gas Light and Coke Co., 21 T.L.R. 184 211, 226
Clarkson *v.* Musgrave, 9 Q.B.D. 386 . . . 94

Digitized by Google

PAGE
Clatworthy *v.* Green, 86 L.T. 702 260
Cleland *v.* Singer Manufacturing Co., 7 F. 975 . . 71
Clement *v.* Bell & Sons, 1 F. 924 182
Cochrane *v.* Trail, 3 F. 27 254
Cochrane *v.* Trail, 37 S.L.R. 662 . . 251, 252, 256
Collins *v.* Collins [1907] 2 I.R. 104 . . . 67
Colville *v.* Tighe, 8 F. 179 250
Constantine, The, 4 P.D. 156 242
Cook *v.* North Metropolitan Tramways Co., 18 Q.B.D. 683 16, 175
Cooper and Crane *v.* Wright [1902] A.C. 302 17, 113, 117
Cooper *v.* Fife Coal Co. [1907] S.C. 564 . . . 180
Corbet *v.* Glasgow Iron and Steel Co., 5 F. 782 . . 196
Coulthard *v.* The Consett Iron Co. [1905] 2 K.B. 869 . 181
Cowler *v.* Moresby Coal Co., 1 T.L.R. 575. . . . 68
Cremins *v.* Guest, Keen, and Nettlefold [1908] 1 K.B. 469 61
Cribb *v.* Kynoch, Ltd., No. 2 [1908] 2 K.B. 551 . 73, 74, 87
Crosfield *v.* Tanian [1900] 2 Q.B. 629 . . 226, 229
Cunningham *v.* M'Gregor, 3 F. 775 . . . 181
Dailly *v.* Watson, 2 F. 1044 78
Daniel *v.* Ocean Coal Co. [1900] 2 Q.B. 250 . . 220
Darlington *v.* Roscoe & Sons [1907] 1 K.B. 219 . 182, 193
Davidson *v.* Summerlee and Mossend Iron Co., 5 F. 991 . 213
Davies *v.* Rhymney Iron Co., 16 T.L.R. 329 . 58, 122
Devine *v.* Caledonian Railway, 1 F. 1105 . . . 63
Dewhurst *v.* Mather [1908] 2 K.B. 754 . . 6, 169
Dickinson *v.* North Eastern Railway, 2 H. & C. 735 . 183
Dobson *v.* United Collieries, 8 F. 241 . . . 80
Dothie *v.* Macandrew [1908] 1 K.B. 803 . 6, 168, 203, 208
Dowds *v.* Bennie, 5 F. 268 . . . . 228, 262
Doyle *v.* Beattie, 2 F. 1166 193
Dunham *v.* Clare [1902] 2 K.B. 292 . . . 193
Dunlop *v.* Rankin, 4 F. 203 . . . 252, 253
Edwards *v.* Godfrey [1899] 2 Q.B. 333 72, 73, 74, 85, 86, 130
Edwards *v.* Guest, Keen, and Nettlefold [1904] 1 K.B. 339 213, 221, 225
Elliot *v.* Liggens [1902] 2 K.B. 84 68
Ellis *v.* Ellis [1905] 1 K.B. 234 174
Ellis *v.* Knott, *The Times*, April 9, 1900 . . . 210
Evans *v.* Cook [1905] 1 K.B. 53 . . . 118, 132

Digitized by Google

PAGE
Evans *v.* Penwyllt Dinas Silica Brick Co., Ltd., 18 T.L.R. 58 173
Fagan *v.* Murdoch, 1 F. 1179 . . 183, 192, 195, 216
Falconer *v.* London and Glasgow Engineering Co., 3 F. 564 62, 65
Fenn *v.* Miller [1900] 1 Q.B. 788 121
Fenton *v.* Thorley [1903] A.C. 443 . . . 48, 50, 51
Ferrier *v.* Gourlay, 4 F. 711 228
Field *v.* Longden [1902] 1 K.B. 47 . . 227, 235
Finnie & Son *v.* Duncan, 7 F. 254 . . . 213, 221
Fitzgerald *v.* Clarke [1908] 2 K.B. 796 . . . 66
Fleming *v.* Lochgelly Iron and Coal Co., 4 F. 890 . . 201
Forrester *v.* M'Callum, 3 F. 650 193
Francis *v.* Turner [1900] 1 Q.B. 478 . . . 122
Fraser *v.* Great Northern of Scotland Railway, 3 F. 908 . 71
Freeland *v.* Macfarlane, 2 F. 832 70
Geary *v.* Dixon, 4 F. 1143 196
George *v.* Glasgow Coal Co., *The Times*, Nov. 10, 1908 . 80
Gibbs *v.* Dunlop, 4 F. 971 203
Gibson *v.* Wilson, 38 S.L.R. 450 57
Gibson *v.* Wormald and Walker [1904] 2 K.B. 40 . . 241
Giles *v.* Belford Smith & Co. [1903] 1 K.B. 843 . . 201
Gillett *v.* Fairbank, 3 T.L.R. 618 165
Glasgow and South Western Railway *v.* Laidlaw, 2 F. 708 78
Glasgow Coal Co. *v.* Sneddon, 7 F. 485 . . . 80
Golder *v.* Caledonian Railway, 5 F. 123 . . . 54
Goodlet *v.* Caledonian Railway, 4 F. 986 . . . 68
Gorley *v.* Owners of Backworth Collieries, 21 T.L.R. 494 54
Goslan *v.* Gillies [1907] S.C. 68 63
Gourlay *v.* Sweeney, 8 F. 965 252
Great Eastern Steam Shipping Co., In *re*, 5 Asp.M.C. 511 136
Great Northern Railway Co. *v.* Dawson [1905] 1 K.B. 331 168, 203
Great Northern Railway Co. *v.* Whitehead, 18 T.L.R. 816 131
Grewar *v.* Caledonian Railway, 4 F. 895 . . . 200
Griffith *v* Dudley, 9 Q.B.D. 357 16
Guthrie *v.* Boase Spinning Co., Ltd., 38 S.L.R. 483 . 80
Haddock *v.* Humphries, *The Times*, August 1, 1899 . 241
Haley *v.* United Collieries [1907] S.C. 214 . . 60
Hall *v.* Snowdon [1899] 1 Q.B. 593 . . . 241

Digitized by Google

PAGE
Hamilton Fraser & Co. *v.* Pandorf, 12 A.C. 518 . . 50
Hamlyn *v.* Crown Insurance Co. [1893] 1 Q.B. 750 48, 49
Harris *v.* Amery, L.R. 1 C.P. 148 115
Harrison *v.* Whitaker, 64 J.P. 54 64
Harwood *v.* Abrahams [1901] 2 K.B. 304 . . . 241
Hathaway *v.* Argus Printing Co. [1901] 1 Q.B. 96 202, 207
Hayden *v.* Dick, 5 F. 150 174
Haylett *v.* Vigor & Co. [1908] 2 K.B. 837 . 145, 150, 268
Hearn *v.* Phillips, 1 T.L.R. 475 94
Hendry *v.* Caledonian Railway [1907] S.C. 732 . . 68
Hensay *v.* White [1900] 1 Q.B. 481 . . 50, 51
Herd *v.* Summers, 7 F. 870 166
Hewlett *v.* Hepburn, 16 T.L.R. 56 . . . 202
Hill *v.* Begg [1908] 2 K.B. 802 . . . 5, 170
Holmes *v.* Great Northern Railway Co. [1900] 2 Q.B. 409 59
Holness *v.* Mackay and Davis [1899], 2 Q.B. 319 . 56, 59
Houghton *v.* Sutton Heath and Lea Green Collieries Co., Ltd. [1901] 1 K.B. 93 203
Houlder Line, Ltd., *v.* Griffin [1905] A.C. 220 . 20, 136
Howells *v.* Vivian & Sons, 85 L.T. 529 . . . 179
Huball *v.* Everitt, 16 T.L.R. 168 242
Hughes *v.* Summerlee and Mossend Iron and Steel Co., 5 F. 784 195
Hughes *v.* Thistle Chemical Co. [1907] S.C. 607 . . 254
Hunter *v.* Baird, 7 F. 304 202
Husband *v.* Campbell, 5 F. 1146 71
Hutchinson *v.* York, Newcastle, and Berwick Railway Co., 5 Exch. 343. 14
Illingworth *v.* Walmsley, 16 T.L.R. 281 . . . 211
Imperial Loan Co. *v.* Stone [1892] 1 Q.B. 599 . . 84
Incorporated Council of Law Reporting, In *re* the, 29 Q.B.D. 279. 116
Irons *v.* Davis and Timmins, Ltd. [1899] 2 Q.B. 330 70, 251, 253
Isaacson *v.* New Grand (Clapham Junction), Ltd. [1903] 1 K.B. 539 . . . . 74, 86, 87, 242
Ismay *v.* Williamson [1908] A.C. 437 . . . 54
James *v.* Ocean Coal Co. [1904] 2 K.B. 213 . . 201
Jamieson *v.* Fife Coal Co., 5 F. 958 . . . 196
John *v.* Albion Coal Co., 65 J.P. 788 . . . 78

Digitized by Google

PAGE
Johnson *v.* Lindsay [1891] A.C. 371 . . . 14
Johnson *v.* Marshall, Sons & Co., Ltd. [1906] A.C. 409 79, 82
Johnston *v.* Cochran & Co., 6 F. 854 . . . 228
Johnston *v.* Mew, Langton & Co., 24 T.L.R. 175 . . 254
Jones *v.* Great Central Railway, 4 W.C.C. 23 246, 251, 252
Jones *v.* Ocean Coal Co. [1899] 2 Q.B. 124 . . 202
Jones *v.* Rhymney Iron Co. [1902] 1 K.B. 57 . . 200
Keane *v.* Nash, 88 L.T. 790 240
Keast *v.* Barrow Hæmatite Steel Co., 15 T.L.R. 141 . 202
Keen *v.* Milwall Dock Co., 8 Q.B.D. 482 . . . 93
Keenan *v.* Flemington Coal Co., 5 F. 164 . . . 60
Kilpatrick *v.* Wemyss Coal Co. [1907] S.C. 320 . 98, 99
Kniveton *v.* Northern Employers Co. [1902] 1 K.B. 880 . 240
Leach *v.* Life and Health Insurance Association [1901] 1 K.B. 707 240
Leggett *v.* Burke, 4 F. 693 180
Leonard *v.* Baird, 3 F. 890 193
Lewis *v.* Great Western Railway Co., 3 Q.B.D. 195 . 76
Little *v.* Maclellan, 2 F. 387 75
Lloyd *v.* Sugg [1900] 1 Q.B. 481 . . . 49, 51
Lochgelly Iron and Coal Co. *v.* Sinclair [1907] S.C. 3 . 254
Logue *v.* Fullerton, 3 F. 1006 68
London and Edinburgh Shipping Co. *v.* Brown, 7 F. 488 . 64
Losh *v.* Evans, 51 W.R. 243 67
Louth *v.* Ibbotson [1899] 1 Q.B. 1003 . . . 120
Lowe *v.* Myers [1906] 2 K.B. 265 . . 97, 98
Lowe *v.* Pearson [1899] 1 Q.B. 261 . . . 63
Lowry *v.* Sheffield Coal Co., 24 T.L.R. 142 . . 62
Lynch *v.* Baird, 6 F. 271 80
Lysons *v.* Knowles [1901] A.C. 79 . . . 200
McAllen *v.* Perthshire County Council, 8 F. 783 . 62, 67
M'Cue *v.* Barclay, 4 F. 909 200
M'Donald *v.* Dunlop, 7 F. 533 73
Macdonald *v.* Fairfield Shipbuilding Co., 8 F. 8 . . 250
Macdonald *v.* Owners of ss. *Banana* [1908] 2 K.B. 926 . 62
M'Gowan *v.* Smith [1907] S.C. 548 . . . 86
M'Groarty *v.* Brown, 8 F. 809 80
McIntyre *v.* Rodgers, 6 F. 176 68
Mackenzie *v.* Coltness Iron Co., 6 F. 8 . . . 60
McLaughlin *v.* Clayton, *The Times*, Feb. 28, 1899 . . 241

Digitized by Google

PAGE
M'Nicholas *v.* Dawson [1899] 1 Q.B. 773 . . . 68
M'Nicol *v.* Spiers, Gibbs & Co., 1 F. 604 . . 68, 80
Main Colliery *v.* Davies [1900] A.C. 358 . . . 179
Malone *v.* Cayzer, Irvine & Co. [1908] S.C. 479 . . 193
Manchester *v.* Carlton, 89 L.T. 730 . . . 218
Marno *v.* Workman, Clark & Co., 33 I.L.T. 183, and see note at [1900] 2 Q.B. 149 98
Marrow *v.* Flimby and Broughton Co., Ltd. [1898] 2 Q.B. 588 173
Marshall *v.* East Holywell Coal Co., 21 T.L.R. 494 . 54
Martin *v.* Travellers Insurance Co., 1 F. & F. 505 . . 55
Mason *v.* Dean [1900] 1 Q.B. 770 117
Maver *v.* Park, 8 F. 250 98
Menzies *v.* McQuibban, 2 F. 732 64
Middlemiss *v.* Berwickshire County Council, 2 F. 392 . 122
Midland Railway Co. *v.* Sharpe [1904] A.C. 349 . 204, 208
Mitchell *v.* Glamorgan Coal Co., 23 T.L.R. 588 . . 60
Morgan *v.* London General Omnibus Co., 13 Q.B.D. 832 16, 175
Morgan *v.* Vale of Neath Railway Co., L.R. 1 Q.B. 149 . 14
Morris *v.* Lambeth Borough Council, 22 T.L.R. 22 . 68
Morris *v.* Northern Employers' Co. [1902] 2 K.B. 165 . 240
Morton *v.* Woodward [1902] 2 K.B. 276 . . . 227
Moyes *v.* Dixon, 7 F. 386 186
Moyle *v.* Jenkins, 8 Q.B.D. 116 93
Mulrooney *v.* Todd, 25 T.L.R. 103 115
Nash *v.* Hollinshead [1901] 1 K.B. 700 . . . 116
Neale *v.* Electric and Ordnance Accessories Co., Ltd. [1906] 2 K.B. 558 . . . 74, 75, 87, 242
Nelson *v.* Kerr and Mitchell, 3 F. 893 . . . 201
Nicholson *v.* Piper [1907] A.C. 215 . . . 227
Niddrie and Benhar Coal Co. *v.* M'Kay, 5 F. 1121 213, 221
Norman and Burt *v.* Walder [1904] 2 K.B. 27 . . 226
O'Donovan *v.* Cameron [1901] 2 I.R. 633 . . . 182
O'Hara *v.* Cadzow Coal Co., 5 F. 439 . . . 80
O'Keefe *v.* Lovatt, 18 T.L.R. 57 193
Oliver *v.* Nautilus Co. [1903] 2 K.B. 639 . . . 130
O'Neill *v.* Motherwell [1907] S.C. 1076 . . . 100
Osborn *v.* Vickers [1900] 2 Q.B. 91 . . . 212
Osborne *v.* Barclay [1901] A.C. 269 . 241, 265

Digitized by Google

PAGE

Osmond *v.* Campbell and Harrison [1905] 2 K.B. 852 183, 194, 210
Page *v.* Burtwell [1908] 2 K.B. 758 . . . 129
Parker *v.* Dixon, 4 F. 1147 196
Paterson *v.* Lockhart, 7 F. 954 174
Pattison *v.* White, 20 T.L.R. 775 122
Peacock *v.* Niddrie and Benhar Coal Co., 4 F. 443 . 201
Pearce *v.* London and South Western Railway Co. [1900] 2 Q.B. 100 . . . . . 115, 120
Penn *v.* Spiers [1908] 1 K.B. 766 . . . 6, 208, 209
Perry *v.* Clements, 17 T.L.R. 525 98
Perry *v.* Wright [1908] 1 K.B. 441 . . 7, 205, 208, 209
Pomfret *v.* Lancashire and Yorkshire Railway Co. [1903] 2 K.B. 718 65
Pomphrey *v.* Southwark Press [1901] 1 K.B. 86 65, 203, 208
Potter *v.* Faulkner, 1 B. & S. 800 13
Powell *v.* Brown [1899] 1 Q.B. 157 . . . 120
Powell *v.* Edwards, *The Times*, July 23, 1900 . . 210
Powell *v.* Lanarkshire Steel Co., 6 F. 1039 . . 81
Powell *v.* Main Colliery Co., Ltd. [1900] A.C. 366 83, 97, 98, 102
Praties *v.* Broxburn Oil Co. [1907] S.C. 581 . . 80
Previsi *v.* Gatti, 4 T.L.R. 487 94
Price *v.* Marsden [1899] 1 Q.B. 493 . . 203, 208
Priestley *v.* Fowler, 3 M. & W. 1 14
Pryce *v.* Penrikyber Navigation Colliery Co., Ltd. [1902] 1 K.B. 221 193
Pugh *v.* London, Brighton, and South Coast Railway Co. [1896] 2 Q.B. 248 49
Pumpherston Oil Co. *v.* Cavaney, 5 F. 963 . . 228
Queen *v.* Clarke [1906] 2 I.R. 135 182
Rankine *v.* Alloa Coal Co., 6 F. 375 . . . 97
Reeks *v.* Kynochs, Ltd., 50 W.R. 113 . . . 79
Rees *v.* Penrikyber Navigation Colliery Co., Ltd. [1903] 1 K.B. 259 174
Rees *v.* Powell Duffryn Steam Coal Co., Ltd., 64 J.P. 164 78, 79
Rees *v.* Richards, *The Times*, August 8, 1899 . . 242
Rees *v.* Thomas [1899] 1 Q.B. 1015 . . . 63
Rendall *v.* Hill's Dry Dock and Engineering Co., Ltd. [1900] 2 Q.B. 245 . . . 83, 99, 100, 101

Digitized by Google

PAGE
R. v. Evans, 62 L.T. 570 239
R. v. Judge of City London Court, 25 Q.B.D. 339 . 136
R. v. Justices of Southampton, 96 L.T. 697 . . 239
R. v. Owen [1902] 2 K.B. 436 257
R. v. Shinfield, 14 East 541 175
Rigby v. Cox [1904] 1 K.B. 358 240
Rigby v. Cox [1904] 2 K.B. 208 246
Robertson v. Allan, 98 L.T. 821 61
Rogers v. Mayor of Cardiff [1905] 2 K.B. 832 . . 121
Roper v. Greenwood, 83 L.T. 471 51
Rosengvist v. Bowring [1908] 2 K.B. 109 . . 6, 209
Rosewell Gas Co. v. M'Vicar, 7 F. 290 . . . 246
Rothwell v. Davis, 19 T.L.R. 423 197
Rouse v. Dixon [1904] 2 K.B. 628 . . . 73
Rowland v. Wright, 24 T.L.R. 852 . . . 67
Rumboll v. Nunnery Colliery Co., Ltd., 80 L.T. 42 . 77
Russell v. M'Cluskey, 2 F. 1312 193
Schofield v. The Orrell Colliery, 25 T.L.R. 106 . . 183
Searle v. Lindsay, 11 C.B.N.S. 429 . . . 13
Secretary of the Board of Trade v. Sundholm, 4 Asp.M.C. 196 140
Senior v. Fountains and Burnley [1907] 2 K.B. 563 . 180
Senior v. Ward, 28 L.J.Q.B. 139 13
Sharman v. Holliday [1904] 1 K.B. 235 . . . 226
Sharp v. Johnson & Co., Ltd. [1905] 2 K.B. 139 . . 59
Shea v. Drolenvaux, 88 L.T. 679 242
Shearer v. Miller & Sons, 37 S.L.R. 80 . . . 96
Simmons v. Faulds, 17 T.L.R. 352 173
Simmons v. White [1899] 1 Q.B. 1005 . . 178, 179
Simpson v. Ebbw Vale Steel, Iron, and Coal Co., Ltd. [1905] 1 K.B. 453 175
Sinclair v. Maritime Passengers Co., 30 L.J.Q.B. 77 . 55
Skeggs v. Keen, *The Times*, May 16, 1899 . . . 241
Smith v. Anderson, 15 C.D. 247 116
Smith v. Baker [1891] A.C. 325 13
Smith v. Coles [1905] 2 K.B. 827 117
Smith v. Cord Taton Co., *The Times*, Feb. 6, 1900 . 197
Smith v. Lancashire and Yorkshire Railway Co. [1899] 1 Q.B. 141 . . . . . 62, 239
Smith v. South Normanton Colliery Co., Ltd. [1903] 1 K.B. 204 65

Digitized by Google

PAGE
Sneddon *v.* Robert Addie & Sons, 6 F. 992 . . 181
Speak *v.* Powell, L.R. 9 Exch. 25 116
Stanland *v.* North Eastern Steel Co., 23 T.L.R. 1 . . 242
Steel *v.* Cammell Laird & Co. [1905] 2 K.B. 232 49, 53, 54
Steel *v.* Oakbank Oil Co., 5 F. 244 228
Stephens *v.* Dudbridge [1904] 2 K.B. 225 . . 75, 84
Stewart *v.* Wilsons and Clyde Coal Co., Ltd., 5 F. 120 52
Stone *v.* Hyde, 9 Q.B.D. 76 93
Strannigan *v.* Baird, 6 F. 784 . . . 213, 221
Stuart *v.* Nixon [1901] A.C. 79 241
Sweeney *v.* Pumpherston Oil Co., 5 F. 972 . . 197
Tarrant *v.* Webb, 18 C.B. 797 13
Taylor, *Re*, 4 C.D. 159 245
Taylor *v.* Hamstead Collieries Co., Ltd. [1904] 1 K.B. 838 75, 110
Thomas *v.* Quartermaine, 18 Q.B.D. 685 . . . 16
Thompson *v.* Arlington Coal Co., Ltd., 84 L.T. 412 . 50
Thomson *v.* Hart, 28 S.L.R. 28 136
Timmins *v.* Leeds Forge Co., Ltd., 16 T.L.R. 521 . . 50
Todd *v.* Caledonian Railway, 36 S.L.R. 784 . 61, 68
Treherne *v.* Ocean Coal Co., 21 T.L.R. 621 . 107, 108
Tunney *v.* Midland Railway Co., L.R. 1 C.P. 291 . . 57
Turnbull *v.* Lambton, 82 L.T. 589 121
Turner *v.* Whitefield, 6 F. 822 181
Union Bank *v.* Lenanton, 3 C.P.D. 243 . . . 138
United Collieries *v.* M'Ghie, 8 F. 808 . . . 80
Valenti *v.* Dixon [1907] S.C. 695 75
Vamplew *v.* Parkgate Iron and Steel Co., Ltd. [1903] 1 K.B. 851 174
Vickery *v.* Great Eastern Railway Co., 14 T.L.R. 562 . 61
Villar *v.* Gilbey [1907] A.C. 139 181
Walker *v.* Lilleshall Coal Co., Ltd. [1900] 1 Q.B. 481 . 50, 51
Wallace *v.* Glenboig Fire Clay Co., Ltd. [1907] S.C. 967 79
Wallace *v.* Hawthorne [1908] S.C. 713 . . 108, 189
Webster *v.* Sharp [1905] A.C. 284 210
Welland *v.* Great Western Railway Co. 16 T.L.R. 297 240, 246, 261
Wheale *v.* Rhymney Iron Co. [1902] 1 K.B. 57 . . 200
Whitbread *v.* Arnold, 99 L.T. 103 . . . 61, 175
Whitehead *v.* Reader [1901] 2 K.B. 48 64

Digitized by Google

PAGE
Wicks *v.* Dowell & Co., Ltd. [1905] 2 K.B. 225 . . 66
Willett *v.* Boote, 6 H. & N. 26 172
Williams *v.* Army and Navy Auxiliary Co-operative Society, 23 T.L.R. 408 240
Williams *v.* Birmingham Battery Co., Ltd. [1899] 2 Q.B. 338 13
Williams *v.* Jones, 3 H. & C. 602 172
Williams *v.* Ocean Coal Co. [1907] 2 K.B. 422 . . 181
Williams *v.* Poulson, 16 T.L.R. 42 . . . 202
Williams *v.* Vauxhall Colliery Co., Ltd. [1907] 2 K.B. 433 . 227
Wilson *v.* Jackson, 7 W.C.C. 122 211
Wilson *v.* Ocean Coal Co., 21 T.L.R. 621 . . . 107
Winspear *v.* Accident Insurance Co., Ltd., 6 Q.B.D. 42 . 55
Wright *v.* Bagnall [1900] 2 Q.B. 240 . . 84, 99
Wrigley *v.* Whittaker [1902] A.C. 299 . . . 122
Yarmouth *v.* France, 19 Q.B.D. 647 . . . 13
Yewens *v.* Noakes, 6 Q.B.D. 530 172
Zugg *v.* Cunningham [1908] S.C. 827 . . . 114

Digitized by Google

ABBREVIATIONS

A.C. = Appeal Cases.
Asp.M.C. = Aspinall's Maritime Cases.
B. & S. = Best and Smith.
C.B.N.S. = Common Bench, New Series.
C.D. = Chancery Division.
C.P. = Common Pleas.
C.P.D. = Common Pleas Division.
Exch. = Exchequer.
F. = Fraser's Reports (Scotland).
F. & F. = Foster and Finlason.
H. & C. = Hurlstone and Coltman.
H. & N. = Hurlstone and Norman.
I.R. = Irish Reports.
J.P. = Justice of the Peace.
K.B. = King's Bench.
L.J. = Law Journals.
L.R. = Law Reports.
L.T. = Law Times.
M. & W. = Meeson and Welsby.
Macq. = Macqueen's Reports (Scotch Appeals).
Q.B. = Queen's Bench.
Q.B.D. = Queen's Bench Division.
S.C. = Court of Sessions Cases (Scotland).
S.L.R. = Scottish Law Reporter.
T.L.R. = *The Times* Law Reports.
W.C.C. = Minton-Senhouse's Workmen's Compensation Cases.
W.R. = Weekly Reporter.

Digitized by Google

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

THE LAW PRIOR TO 1906

THE Workmen's Compensation Act, 1906, repeals the Workmen's Compensation Acts, 1897 and 1900. It, however, leaves to the workman his rights under the common law and the Employers' Liability Act, 1880. It is necessary, therefore, to recapitulate briefly what these common law and statutory rights are.

By the Common Law, if a servant is injured, he can recover damages from his master, where the injury is due to the master's negligence.

Such negligence occurs where—

(i) the master is personally careless (*Ashworth* v. *Stanwix*, 30 L.J.Q.B. 183; *Smith* v. *Baker* [1891] A.C. 325). Or—

(ii) the master does not take due care to employ competent fellow-servants (*Tarrant* v. *Webb*, 18 C.B. 797; *Senior* v. *Ward*, 28 L.J.Q.B. 139; *Potter* v. *Faulkner*, 1 B. and S. 800). Or—

(iii) the master allows his premises or plant to remain in a dangerous condition when he knows or ought to know that their condition is dangerous (*Williams* v. *Birmingham Battery Company* [1899], 2 Q.B. 338; *Searle* v. *Lindsay*, 11 C.B.N.S. 429).

But even if the master is negligent, he is not liable if the injury resulted from a risk which the servant impliedly undertook to run (*Yarmouth* v. *France*, 19 Q.B.D. 647); for the maxim of the common law is "Volenti non fit injuria." So if the servant undertakes the care of dangerous machinery, and is injured while

Digitized by Google

looking after it, he has no remedy (*Bartonshill Coal Company* v. *Reid*, 3 Macq. 266).

And with regard to fellow-servants, it has been held that one of the risks that servants impliedly undertake to run is the negligence of their fellow-servants. If the master takes due care to choose competent fellow-servants, his duty is at an end, and he is not liable to his other servants for their negligence. This is the well-known doctrine of "common employment," and was first distinctly laid down in *Priestley* v. *Fowler* (3 M. and W. 1) and in *Hutchinson* v. *York, Newcastle, and Berwick Railway* (5 Exch. 343). In the latter case an employee of a railway company, while travelling in the course of his duty in one of the company's trains, was injured through that train colliding with another belonging to the same company, and the collision was caused by the negligence of the driver of the latter train; it was held that the plaintiff and the driver were in common employment, and therefore the plaintiff could not recover.

The meaning of this doctrine was considered in *Morgan* v. *Vale of Neath Railway Company* (L.R. 1 Q.B. 149), where it was held that a railway porter was in common employment with the navvies engaged in moving a turn-table. It was said in that case that common employment "does not necessarily imply that both servants should be engaged in the same or even similar acts, so long as the risk of injury from the one is so much a natural and necessary consequence of the employment which the other accepts that it must be included in the risks which have to be considered in his wages."

It should be noticed that the doctrine only applies as between servants of the same employer (*Cameron* v. *Nystrom* [1893], A.C. 308). And therefore it did not apply where one workman was the servant of a contractor and the other was the servant of the contractor's employer (*Johnson* v. *Lindsay* [1891] A.C. 371).

The Employers' Liability Act, 1880, was passed with the object of mitigating the hardships caused by the

Digitized by Google

application of the doctrine of common employment. It does not extend to all workmen, but only to—

1. Railway servants.
2. Labourers.
3. Husbandmen.
4. Journeymen.
5. Artificers.
6. Handicraftsmen.
7. Miners.
8. Other persons engaged in manual labour, not being domestic or menial servants.

If any of the above are injured, the employer is by this Act precluded from setting up the defence of common employment, if the injury was due to—

(i) a defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer (sec. 1, subsec. 1) caused, undiscovered, or unremedied by the negligence of the employer, or of some person entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition (sec. 2, subsec. 1). Or—

(ii) the negligence of a fellow-servant who has any superintendence entrusted to him, while so superintending (sec. 1, subsec. 2). Or—

(iii) the negligence of any person in the employment of the master to whose orders the servant at the time of the injury was bound to and did conform, where the injury was the result of so conforming (sec. 1, subsec. 3). Or—

(iv) the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf (sec. 1, subsec. 4); but only if the injury resulted from any impropriety or defect in such rules, bye-laws, or instructions (sec. 2, subsec. 2). Or—

Digitized by Google

(v) the negligence of a fellow-servant having charge or control of any signal points, locomotive engine, or train upon a railway (sec. 1, subsec. 5).

Actions under this Act must be brought in the county court, and the damages recoverable are limited to three years' average earnings.

There are several defects in this Act, the chief of which are :—

1. The master can still rely on the defence of "Volenti non fit injuria," except in "common employment" cases. See *Thomas* v. *Quartermaine* (18 Q.B.D. 685).

2. The workman can contract himself out of the Act (*Griffith* v. *Dudley*, 9 Q.B.D. 357).

3. It only applies to a limited class of workers. Thus omnibus conductors (*Morgan* v. *London General Omnibus Company*, 13 Q.B.D. 832), tramway drivers (*Cook* v. *North Metropolitan Tramways Company*, 18 Q.B.D. 683), and shop assistants (*Bound* v. *Lawrence* [1892] 1 Q.B. 226) are none of them employed in "manual labour," and so are not within the Act.

4. It does not apply where the injury is due to the negligence of a fellow-servant not "having superintendence" over the injured servant.

5. The master can rely on the defence of contributory negligence.

This Act is still in force. It is set out in Appendix N.

The Workmen's Compensation Act, 1897, introduced an entirely new principle into the law, and for the first time made the employer liable for injuries to his workmen, apart from any negligence on the part of the employer or his servants. The Act was admittedly an experiment, and only extended to certain employments which were considered especially dangerous. It provided that in those employments, if the workman was injured by an accident arising out of or in the course of his employment, the employer should be liable to pay compensation to the workman or his dependants in accordance with a scale

Digitized by Google

set out in the first schedule (sec. 1, subsec. 1). The compensation had to be paid whatever the cause of the injury, unless it was due to the serious and wilful misconduct of the workman (sec. 1, subsec. 2 (*c*)). It also provided that the workman could only contract out of the Act in accordance with a scheme certified by the Chief Registrar of Friendly Societies (sec. 3).

It only applied to employment by the undertakers (the meaning of which word led to a great deal of litigation; see *Cooper and Crane* v. *Wright* [1902] A.C. 302) on, in, or about—

1. Railways;
2. Factories;
3. Mines;
4. Quarries;
5. Engineering works; and
6. Buildings which exceeded 30 feet in height, and were either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power was being used for the construction, repair, or demolition thereof (sec. 7).

This Act improved the position of workmen in the following ways:—

1. It gave a remedy apart from any question of negligence, and abolished the defences of "Volenti non fit injuria," common employment, and contributory negligence.
2. It only permitted contracting out where the workman's interests were properly guarded.

But, on the other hand, it had numerous defects. Thus—

(i) It only applied to a very limited number of employments.

(ii) It was intended to be expressed in popular language, easy for workmen to understand. This led to the unfortunate result that it gave rise to more litigation than any other Act which has been passed in modern times.

Digitized by Google

(iii) It was extremely capricious in its operation. For instance, if a workman was injured on a building 31 feet high he was compensated; if the building was only 29 feet high he got nothing.

This Act is repealed by the Workmen's Compensation Act, 1906. It is set out in Appendix L.

The Workmen's Compensation Act, 1900, extended the provisions of the Act of 1897 to workmen employed in agriculture. This Act has also been repealed by the Workmen's Compensation Act, 1906. It is set out in Appendix M.

The Workmen's Compensation Act, 1906, proceeds broadly on the same lines as the Act of 1897, but alters it in the following ways:—

(i) It applies to practically all employments.

(ii) Instead of serious and wilful misconduct of the workman being a defence in all cases, it is only so if neither death nor serious and permanent disablement supervenes.

(iii) The old Act only applied to injuries by accident, but this applies also to certain "industrial diseases."

(iv) This Act applies to seamen.

(v) It is framed in more precise and technical language. See particularly Sched. I. para. 2.

(vi) It lessens the period during which the disablement must last in order to give rise to the right to be compensated.

(vii) The class of "dependants" is increased, so as to include *inter alia* illegitimate children.

(viii) By the provisions with regard to registration it prevents unfair bargains being made as to the amount of compensation.

Digitized by Google

SUMMARY OF THE ACT

THE order in which the various subjects are dealt with in the Act makes it difficult for one unacquainted with its provisions to refer to any point quickly. It is proposed therefore in this chapter to summarise the Act by putting the different matters in a logical order, with a reference in each case to the place in the annotated text where it is more fully considered.

The main object of the Act is to award compensation to workmen who are injured by accident. The whole subject has therefore been divided into five headings, as follows:—

1. *The persons entitled to compensation.*
2. *The circumstances under which compensation is payable.*
3. *The amount of the compensation.*
4. *The persons liable to pay the compensation.*
5. *Procedure.*

1. *The Persons Entitled to Compensation.*

There are three classes of persons who, as the circumstances differ, are entitled to be compensated—

(*a*) *Workmen.*
(*b*) *Dependants.*
(*c*) *The persons liable for a deceased workman's medical and funeral expenses.*

(*a*) *Workmen.*—The expression "workman" is defined in sec. 13 of the Act, as follows: "Workman does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is

Digitized by Google

of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an out worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is express or implied, is oral or in writing" (see p. 166 infra).

"Member of a family," "police force," and "out worker" are all defined in sec. 13 (*q.v.*).

A man is not a servant if he is an "independent contractor." For the cases on this subject see p. 172.

Persons in the service of the Crown are "workmen" if they are otherwise within the Act; but there is an exception in the case of persons in the naval and military services, who are excluded (see sec. 10, p. 158).

Seamen.—The case of seamen is considered in sec. 7 (see p. 133). It had been held under the Act of 1897 that seamen were not workmen within the meaning of that Act (*Houlder Line, Ltd., v. Griffin* [1905], A.C. 220). By this section the present Act is expressly extended to "masters seamen and apprentices to the sea service and to apprentices in the sea-fishing service."

It is, however, clear that the ordinary rules with regard to giving notice of the accident, making claim for compensation, etc., cannot apply in cases where an accident happens at sea; and the right to compensation under this section is therefore made subject to a number of "modifications" dealing with such matters (see pp. 139–42). It should be noticed that pilots are within the Act, but not such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(*b*) *Dependants.*—If the workman is killed by the accident, his "dependants" are entitled to compensation. See para. 1 of Sched. I. "Dependants" is defined in sec. 13 (see p. 177) as meaning "such mem-

Digitized by Google

bers of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would, but for the incapacity due to the accident, have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively." "Member of a family" is defined in the same section.

A great number of cases have fallen to be decided on the meaning of this word. These are discussed infra at pp. 178–82.

Dependants are also dealt with in the note on Sched. I. para. 1 (*a*) (see p. 191). For the purposes of that paragraph dependants are divided into two classes according as they are totally or partially dependent on the deceased workman, and the cases show the difference between these two classes and the way they are to be treated.

It is provided by Sched. I. para. 8 that any question arising as to who is and who is not a dependant is to be settled by arbitration under this Act (see p. 215).

(*c*) *The persons liable for a deceased workman's medical and funeral expenses* are entitled to recover compensation, not exceeding £10, if the workman leaves no dependants (see Sched. I. para. 1. (*a*) iii. p. 195).

2. *The Circumstances under which Compensation is Payable.*

A. *Injury by Accident.*—The normal case where compensation is payable is when the workman has sustained personal injury by accident arising out of and in the course of his employment (sec. 1, subsec. 1).

The meaning of "injury by accident" is dealt with at pp. 48–54, and of "arising out of and in the course of the employment" at pp. 55–68.

But it is not in every case where a workman has sustained personal injuries by accident arising out of and

Digitized by Google

in the course of his employment that compensation is payable, for—

(i) No compensation is payable if the workman is not disabled for one full week from earning full wages at the work at which he was employed. This is sec. 1, subsec. 2 (*a*) (p. 68).

(ii) if the injury is due to the serious and wilful misconduct of the workman, no compensation is payable unless the injury result in death or serious and permanent disablement. This is sec. 1, subsec. 2 (*c*) (p. 76). For the meaning of "serious and wilful misconduct" see the cases cited at pp. 76–81.

(iii) a claim for compensation is not maintainable unless notice of the accident is given as soon as practicable after the happening of the accident, and unless a claim for compensation is made within six months. This is enacted by sec. 2 (p. 91). By the provisos to this section, a failure to give notice or make a claim is excused in a number of cases (see p. 92). These exceptions are so wide that it can rarely happen that a right to compensation is lost through a failure to comply with this section.

B. "*Industrial*" *Diseases.*—Besides the normal case of injury by accident, the workman also receives compensation if he falls ill of certain specified "industrial" diseases. This question is dealt with in sec. 8, and an elaborate code is there laid down (see pp. 143–55). It is not every disease that gives a right to compensation under this section, which is only payable where—

(*a*) the certifying surgeon certifies that the workman is suffering from one of the diseases mentioned in the third schedule (see p. 267) of the Act, or in any of the orders made extending that schedule (see p. 476); or—

(*b*) the workman is in fact suspended from his employment because he is suffering from some such disease; or—

Digitized by Google

(*c*) the death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the disablement or suspension.

It will be seen that it would often be very difficult to prove whether or not a disease was due to the nature of the employment. It has therefore been enacted by subsec. 2 of sec. 8 that where the workman at or immediately before the date of the suspension was employed in any process mentioned in the second column of the third schedule, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease shall be deemed to be due to the nature of the process, unless the contrary is proved (see p. 149).

If the workman has been in the service of several employers in the same business, it is difficult to tell in whose service the disease was contracted. It is therefore provided in subsec. 1 (*c*) that the employer who last employed the workman in the process in question shall be the person liable to pay the compensation, but that in certain circumstances he may recover the whole or a part of what he has paid from other employers (see p. 146).

Special provisions are also made in this section as to the date which is to be taken to correspond to the date of the accident for the purposes of giving notices, etc. (see p. 151).

Procedure under this section is governed by Rule 39 (p. 298).

C. *The effect of the Exercise of Rights outside the Act.*—In some but not in all cases the fact that a workman has taken proceedings to enforce a remedy outside this Act acts as a bar to his right to be compensated—

(*a*) *Action against his Employer.*—If the injury was caused in such circumstances as to give the workman a right of action against his employer apart

Digitized by Google

from this Act, the workman may at his option either start compensation proceedings or bring his action. This is provided by sec. 1, subsec. 2 (p. 71). He cannot recover both compensation and damages. And it is clear that if he brings an action and fails in it, he cannot afterwards start compensation proceedings (see cases cited at p. 72). The converse case—*i.e.*, where he fails in compensation proceedings and then seeks to bring an action—is not so clear, but it is submitted that there, too, the exercise of the option is final (see p. 74).

But a workman who fails in an action is given the right to ask the Court which tries it to assess compensation then and there. This is provided by sec. 1, subsec. 4 (see p. 84). This right must be exercised immediately at the conclusion of the trial; otherwise it is lost.

(*b*) *Action against a Stranger.*—If the injury was caused in such circumstances as to give the workman a right of action against a stranger and also a right to be compensated by his employer, the workman is not bound to elect, but may start either or both proceedings. But he is not allowed to recover both damages and compensation, and must choose which he will accept. This is the effect of sec. 6 (see pp. 128–32). In Scotland this contingency is dealt with by sec. 14 (see p. 186).

D. *Contracting out.*—A workman may in certain circumstances be deprived of his rights under this Act by virtue of a contract between himself and his employer, but the Act does not look favourably on such contracts, and the circumstances under which they may be entered into are carefully defined in the Act. Sec. 3 deals with this matter (see p. 104). That section provides that an employer and workman can only contract out of the Act in accordance with the provisions of a scheme to be certified by the Chief Registrar of Friendly Societies. Such a scheme is not to be certified unless—

Digitized by Google

(*a*) the majority of the workmen are in favour of it;
(*b*) the scheme provides scales of compensation to the workmen and their dependants at least as advantageous as those under the Act; and
(*c*) if the scheme provides for contribution by the workmen, they receive benefits at least as great as their contributions.

Even if all these conditions are complied with and the scheme is certified, no workman is to be obliged to join it. The certificate is only to be in force for five years, and must be renewed at the end of that time. And the Registrar may at any time revoke the scheme if he is satisfied that it is not being properly administered.

In some cases "schemes" for compensation under the old Act were on foot at the commencement of this Act. These are dealt with in sec. 15, subsecs. 2, 3, and 4 (see p. 188). The effect of these provisions is that the Registrar must re-certify such a scheme if its conditions are made to conform with the requirements of this Act. Otherwise the certificate is revoked six months from the commencement of this Act.

Other contracts (not founded on schemes) existing at the commencement of the Act, whereby a workman relinquishes any rights to compensation from his employer, and shall not be deemed to continue beyond the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of the Act (see sec. 15, subsec. 1, p. 187).

With the above exceptions all contracts purporting to exclude the effect of this Act are absolutely void (see the last sentence of sec. 3, subsec. 1, p. 104).

3. *The Amount of the Compensation.*

The method of computing the amount of compensation differs according as the persons entitled to receive it are—

Digitized by Google

A. *The workman.*
B. *"Total" dependants.*
C. *"Partial" dependants.*
D. *Persons entitled to be paid the medical and funeral expenses.*

A. *Amount payable to the Workman.*—Where the workman is totally or partially incapacitated, he receives compensation on the scale laid down in Sched. I. para. 1 (*b*) (p. 195). That paragraph enacts that where total or partial incapacity for work results from the injury, the amount of compensation shall be a weekly payment during the incapacity not exceeding 50 per cent. of the average weekly earnings of the workman during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed £1.

There are two provisions to this paragraph which qualify its operation:—

(i) The first deals with the case where the incapacity lasts less than two weeks, and enacts that in that event no compensation shall be payable in respect of the first week (see p. 197). It will be remembered that the Act does not apply at all if the injury does not prevent the workman for at least a week from earning full wages (sec. 1, subsec. 2 (*a*) ante, p. 22). The combined effect of that subsection and this proviso is as follows:—
  (*a*) if the incapacity lasts less than a week, no compensation is payable;
  (*b*) if it lasts for a period between one and two weeks, compensation is only payable in respect of that part of the second week during which the incapacity lasts;
  (*c*) if it lasts two weeks and upwards, compensation is payable for the whole period.

(ii) The second proviso deals with the case where the workman who is incapacitated is under twenty-one

Digitized by Google

years of age at the date of the injury (see p. 198). Such youths frequently earn only trifling sums, and half their weekly wages would be very inadequate compensation. It is therefore provided that where the workman is under twenty-one years of age, and his earnings are less than £1 per week, 100 per cent. of his average weekly earnings shall be substituted for 50 per cent., but the weekly payment shall in no case exceed 10s.

Another qualification on the amount of the weekly payments is contained in para. 3 of the first schedule (see p. 209). This paragraph provides that any payment, allowance, or benefit which the workman may receive from the employer during the incapacity shall be taken into account in fixing the amount of the weekly payments. This paragraph also deals with the case of partial incapacity—*i.e.*, where the workman is able to earn something after the accident, but not so much as before it. In such cases it is provided that the weekly payment shall in no case exceed the difference between the amounts he earns before and after the accident respectively, but shall bear such proportion to that amount as may appear proper.

Review.—Where any weekly payment is going on, either the employer or workman may ask to have it reviewed on showing that the circumstances have changed (Sched. I. para. 16, and cases there cited, pp. 225–28).

By the same paragraph, where the workman was under twenty-one years of age at the date of the accident he may, at any time twelve months at least after the accident, without showing that the circumstances have changed, ask that his payments may be increased up to any amount not exceeding 50 per cent. of the sum which, but for the accident, he would probably have been earning, and in no case exceeding one pound per week (see p. 228).

Redemption.—Where any weekly payment has been

Digitized by Google

continued for six months, the employer may have it redeemed by the payment of a lump sum. This is enacted by Sched. I. para. 17 (pp. 229–31). If the incapacity is permanent, the lump sum is such an amount as would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to 75 per cent. of the annual value of the weekly payment. If the incapacity is not permanent, the lump sum shall be such sum as may be determined by arbitration under this Act.

Power is given to the Court to have such lump sum invested or otherwise applied for the benefit of the person entitled. And it is expressly provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

For the procedure under this section see Rule 59 (p. 310).

Average Weekly Earnings.—As the amount of the payments depends on the weekly earnings, it was necessary to provide how that sum was to be computed. This is dealt with in Sched. I. para. 2 (see pp. 198-209).

That paragraph is divided into four clauses.

(i) By the first it is laid down that average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. And where by reason of the shortness of the time during which the workman was employed or the casual nature or the terms of the employment, it is impracticable to find out what such rate was, regard may be had to the average weekly amount earned by other persons in the same grade employed at the same work by the same employer, or if there is no such person, by persons employed in the same grade and work in the service of other employers in the same district (see pp. 204–207).

(ii) The second clause deals with the case where the

Digitized by Google

workman has entered into concurrent contracts of service with several employers. In such a case his average weekly earnings shall be computed as if he worked all the time for one employer (see p. 207).

(iii) The third clause explains that "employment by the same employer" shall mean employment by the same employer in the same grade as he was employed in at the time of the accident, uninterrupted by absence from work due to illness or other unavoidable cause (see p. 207).

(iv) The fourth clause provides that where the employer has been accustomed to pay to the workman any sum to cover special expenses due to the nature of the employment, such sum shall not be reckoned as part of the earnings (see p. 208).

B. *Amount payable to Total Dependants.*—Where a workman is killed by an accident his total dependants receive compensation on the scale laid down in Sched. I. para. 1 (*a*) (i) (see pp. 191–93). That clause enacts that if the workman leaves any dependants wholly dependent upon his earnings they shall receive a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum. If the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer.

C. *Amount payable to Partial Dependants.*—Where the workman leaves persons partly dependent upon him, the amount of compensation which they are to receive is in no case to exceed the amount payable under the foregoing provisions (*i.e.*, with regard to total dependants),

Digitized by Google

but subject to that is to be such sum as is reasonable and proportionate to the injury to the said dependants. This is the effect of Sched. I. para. 1 (*a*) (ii) (see pp. 194–95).

D. *Amount payable to the Persons who have incurred the Medical and Funeral Expenses of the Deceased Workman.*—These can, if there be no dependants, recover as compensation under this Act such sum as these expenses amount to, but they are not to recover more than £10. (see Sched. I. para. 1 (*a*) (iii), p. 195).

4. *The Persons Liable to Pay the Compensation.*

In the ordinary case the compensation is paid by the employer (sec. 1, subsec. 1, p. 47). "Employer" is defined in sec. 13 as including "any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and where the services of a workman are temporarily lent or let on hire to another person by the person with whom he has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person."

There are, however, three cases in which the workman can recover from persons other than the employer.

These are dealt with in the sections on—

(i) *Sub-contracting.*
(ii) *The bankruptcy of the employer.*
(iii) *The owners of ships.*

(i) *Sub-contracting.*—This is dealt with in sec. 4 (see pp. 112–22). The effect of that section is that where a person (called the principal) for the purposes of his trade or business contracts with any other person (called the contractor) for the execution by the contractor of any work undertaken by the principal, then the principal shall be liable to pay to the workmen employed in that work any compensation to which they would have been entitled if directly employed by the principal.

It often happens that the immediate employer of a workman is a man of straw, and this provision in many

Digitized by Google

cases prevents the workman from being practically deprived of his remedy. As its object, therefore, is to protect the workman and not to relieve the employer, it is provided by subsec. 2 that if the compensation is paid in the first instance by the principal he shall be indemnified by the contractor.

By a proviso to subsec. 1 it is provided that the section shall not apply where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work. This is probably due to the fact that in such cases the contractor is more likely to be a substantial man than the farmer who employs him (see pp. 117–18).

Subsec. 4 provides that the section shall not apply where the accident occurred elsewhere than on, in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control (see pp. 119–22).

(ii) *The Bankruptcy of the Employer.*—A workman may also in certain circumstances recover compensation from persons other than the employer in the event of the latter's bankruptcy. Sec. 5 deals with this matter (pp. 123–27). By the first subsection, where an employer is bankrupt or has made a composition or is a company in liquidation, and has previously insured himself under this Act, the rights of the employer against the insurer are transferred to the workman. The workman may therefore take proceedings under this Act against the insurers. By subsec. 2, if the amount insured against is not sufficient to cover the workman's claim, he may prove in the bankruptcy for the balance.

If the employer has not insured, the workman is given a priority over other creditors by subsecs. 3 and 4. These enact that the workman's claim, up to £100 in each individual case, shall be included among those debts which in the distribution of the property of a bankrupt or the assets of a company being wound up are

Digitized by Google

paid in priority to all other debts. And it is also provided that if the compensation be a weekly payment, its value, for the purpose of deciding whether it be worth £100, shall be taken to be the amount of the lump sum for which the weekly payment could if redeemable be redeemed under para. 17 of Sched. I. (*q.v.*, p. 229).

(iii) *The Owners of Ships.*—It has already been pointed out that this Act applies to seamen and that it may happen that the person liable to pay the compensation does not reside in the United Kingdom. In such a case the sailor's remedy might be an illusive one, owing to the difficulty of getting at the employer. It is therefore provided by sec. 11 (see pp. 160–63) that where it is alleged that the owners of a ship as such are liable to pay compensation and that the ship is to be found in any port or river in or within three miles of the coast of England or Ireland, then the judge of any Court of Record in England or Ireland, on its being shown to him that the owners are probably liable to pay compensation and that none of them reside in the United Kingdom, may issue an order for the detention of the ship until the compensation is paid or satisfactory security given. It is further provided in subsec. 2 that the person giving security shall be made defendant in any subsequent proceedings to recover compensation. The person giving security is not necessarily the employer, for he may be either the owner, master, agent, or consignee of the ship. So that in this case the workman might recover compensation from some person who is not the employer; and there is no provision in the Act by which the employer can be made to indemnify that person (see p. 162).

Cases where the Employer is Indemnified.—We must next consider the cases where the employer is primarily liable but has a right to be indemnified by some third person. Such cases occur—

(*a*) *Where the workman has a right of action against a stranger.*—The circumstances of the accident may

Digitized by Google

be such as to give the workman both a right of action against a stranger and a right to recover compensation from his employer. In such a case, if the employer is called upon to pay compensation, he has a right to be indemnified by the stranger (see sec. 6, pp. 128–32). This right can either be enforced by action, or, if both parties consent, by arbitration under this Act (sec. 6, subsec. 2).

(*b*) *Where a Number of Employers have employed a Workman who contracts an Industrial Disease.*—If a workman who contracts an industrial disease has been in the employ of several employers during the twelve months preceding his disablement, the employer who last employed him is primarily liable to pay compensation, but he has a right to be indemnified by the other employers if the disease is of such a nature as to be contracted by a gradual process (see sec. 8, subsec. 1 (*c*) iii., pp. 147–48).

5. *Procedure.*

The procedure under this Act may be conveniently divided into two heads—

1. *Arbitration.*
2. *Other matters.*

1. *Arbitration.*

A. *The Tribunals.*—The Act sets up four different tribunals for conducting arbitrations.

(i) *The Committee.*—By Sched. II. para. 1 (p. 235), where any committee exists representative of an employer and his workmen with powers to settle matters under this Act, the committee is empowered to so settle any matter, provided neither party objects by notice in writing sent to the other party before the committee meet to consider the matter.

(ii) *Arbitrator agreed on by the parties.*—By Sched. II. para. 2 (p. 236), where there is no committee, or either party objects, or the committee refers the matter, or the committee fails to settle it within six months of the claim, the matter may be referred to a single arbitrator agreed on by the parties.

Digitized by Google

(iii) *The Judge of the County Court.*—By Sched. II. para. 2 (p. 236), in default of agreement on an arbitrator, the matter is to be settled by the county court judge.

(iv) *Arbitrator appointed by the County Court Judge.* —By Sched. II. para. 3 (p. 237), in England only, the matter may be referred by the county court judge, with the authority of the Lord Chancellor, to an arbitrator appointed by the county court judge. And on the death, refusal, or inability to act of an arbitrator of either class, the county court judge may appoint another (Sched. II. para. 8, p. 246).

The necessary modifications in Scotland and Ireland are dealt with in Sched. II. paras. 17 and 18 (see pp 264–66).

B. *Questions to be Settled by Arbitration.* — The questions to be settled by arbitration under this Act are—

(i) Any question arising as to the liability to pay compensation (including any question as to whether the person injured is a workman), unless settled by agreement (sec. 1, subsec. 3, p. 82).

(ii) In the case of sub-contracting, any question arising as to the liability of the "contractor" or any other person to indemnify the "principal," unless settled by agreement (sec. 4, subsec. 2, p. 118).

(iii) Where the workman has a right to recover compensation from his employer and also a right to recover damages against a stranger, any question arising as to the liability of the stranger to indemnify the employer who has paid the compensation (sec. 6, subsec. 2, p. 128).

(iv) Any question as to who is a dependant, unless settled by agreement (Sched. I. para 8, p. 215). But if not settled before a payment into court, then the question shall be settled by the county court.

(v) Where a weekly payment is reviewed at the request of either party, any question as to the amount of

Digitized by Google

the altered payment, unless settled by agreement (Sched I. para. 16, p. 225).

(vi) Where, in the case of partial incapacity, a weekly payment is commuted for a lump sum, any question as to the amount of such sum (Sched. I. para. 17, p. 229).

C. *Proceedings on an Arbitration.*—The various steps to be taken are governed by the rules (see Appendix A). The parties to be joined are dealt with in Rules 2–7. The method of applying for an arbitration is dealt with in Rules 8–12. For the method of giving notices see Rules 13–15, 19–23, and 24–26. For the persons by whom any party may appear see Rule 33 (and see pp. 243–44). And see also the amended rules (published on March 14, 1908 (Appendix J).

Costs.—The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or county court judge, as the case may be (Sched. II. para. 7, pp. 244–46). If before a county court judge or an arbitrator appointed by him, such costs are subject to the rules of court. These are Rules 61–64 (see pp. 312–14). In any case the costs are not to exceed the limit prescribed by the rules, and may be taxed as provided in the rules, and such taxation may be reviewed by the county court judge.

The solicitor's right to recover costs from his workman client is dealt with in Sched. II. para. 14 (pp. 259–62). The solicitor or agent of a person claiming compensation is not entitled to recover any costs from him, or to claim a lien in respect of such costs, or to deduct such costs from the sum awarded or agreed as compensation, except such sum as may be awarded, on an application being made, by the committee, arbitrator, or county court judge, as the case may be. For the procedure on such applications see Rules 65 and 66 (pp. 314–16.)

Appeals.—There is no appeal on any question of fact. But a committee or either kind of arbitrator has power

Digitized by Google

to submit a question of law to the county court judge for his decision; and his decision of such questions of law or of any question of law arising in any matter which he himself decides, or where he gives any decision or makes any order under this Act, is appealable by either party to the Court of Appeal (Sched. II. para. 4, p. 238). The procedure on such appeals is governed by the rules of the Supreme Court, Order LVIII. Rule 20. An appeal lies from the Court of Appeal to the House of Lords (see p. 241).

2. *Other Matters.*—Other matters of procedure dealt with in this Act concern the duties of—

A. *The judge and registrar of the county court.*

B. *The Home Secretary.*

C. *Medical men.*

D. *Other bodies.*

A. *The Judge and Registrar of the County Court.*

Apart from arbitration, the judge and registrar have the following ministerial and other duties to perform:—

1. *Weekly Payments.*—Where a weekly payment is payable to any person under a disability, the county court judge may order that sum to be paid into court (Sched. I. para. 7, p. 215, and Rule 57, p. 309).

2. *Neglect of Children, etc.*—Where, on application being made in accordance with the rules, it appears to the county court judge that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants or for any other sufficient cause, an order of the Court or an award as to apportionment amongst dependants or the manner in which any such sum is to be dealt with, ought to be varied, the Court may vary it (Sched. I. para. 9, p. 216, and Rule 58, p. 310).

3. *Medical Referee.*—The county court judge has power to summon a medical referee to sit with him (see infra, and Sched. II. para. 5, p. 243).

4. *New Arbitrator.*—In the case of the death or refusal or inability to act of an arbitrator, the county court judge

Digitized by Google

may, on the application of any party, appoint a new arbitrator (Sched. II. para. 8, p. 246).

5. *Investment.*—Any sum which is ordered to be invested may be invested by the registrar in his name as registrar in the Post Office Savings Bank (Sched. I. para. 10, p. 219).

Any such sum may be accepted by the Postmaster-General as a deposit in the name of the registrar (Sched. I. para. 11, p. 219).

No part of any money invested in the name of the registrar in the Post Office Savings Bank shall be paid out except upon authority addressed to the Postmaster-General by the Treasury, or subject to regulations of the Treasury, by the judge or registrar of the county court (Sched. I. para. 12, p. 219).

6. *Registration of Memorandum.*—A memorandum of the amount of compensation, where such amount has been ascertained or varied either by a committee, by an arbitrator, or by agreement, shall be sent by any party interested to the registrar of the county court; and it then becomes the duty of the registrar, on being satisfied as to its genuineness, to enter such memorandum in a special register without fee, and such memorandum thereupon becomes enforceable as a county court judgment. (Sched. II. para. 9, pp. 247–55).

But it is provided that—

(*a*) No such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested.

(*b*) Where the workman seeks to record the memorandum, and the employer, in accordance with the rules, proves that the workman has in fact returned to work and is earning the same wages as before the accident, the memorandum shall only be recorded on such terms as seem fit to the county court judge.

(*c*) The county court judge may at any time rectify the register.

Digitized by Google

(*d*) Where it appears to the registrar on any information which he considers sufficient that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to persons under disability or to dependants ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud, undue influence, or other improper means, he may refuse to record the memorandum and refer the matter to the county court judge, who shall make such order as he may think just.

And—

(*e*) The judge may, within six months after a memorandum of any agreement as to the redemption of a weekly payment by a lump sum or an agreement as to the amount of compensation payable to persons under legal disability or to dependants has been recorded in the register, order that the record be removed from the register on its being proved to him that such agreement was obtained by fraud, undue influence, or other improper means, and may make such order as he thinks just.

The procedure under this paragraph is governed by Rules 41–50 (pp. 301–304).

By para. 10 (p. 255) it is provided that where one of the agreements referred to in para. 9 (*d*) and (*e*), supra, is not registered neither the agreement nor a payment under it shall exempt the person liable from his liability to pay compensation unless he proves that the failure to register was not due to any neglect or default on his part.

7. *Special Register.*—It is part of the duty of the registrar to keep a special memorandum of all proceedings in the county court under this Act (Rule 81, p. 322).

8. *General.*—It is provided by Sched. II. para. 12 (p. 257) that where under this Act anything is to be

Digitized by Google

done in a county court, it shall be part of the duties of the county court and the officers of the county court shall act accordingly.

Sched. II. para. 11 (p. 256) deals with the question of which is the proper county court to proceed in. In the ordinary case it is to be the county court in the district of which all the parties reside. If the parties do not all reside in the same district, then the proper court is to be determined in the manner prescribed by the rules (Rule 73, p. 319).

The transfer of proceedings from one court to another is dealt with by Rules 74–76 (pp. 320–21).

B. *The Home Secretary.*

The Home Secretary, who is referred to in the Act as the Secretary of State, has powers and duties in the following matters:—

1. *Industrial Diseases* (sec. 8).—By sec. 8, subsec. 3, he may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this Act (p. 151). For the rules made under this subsection see Appendix E.

By subsec. 5 he may appoint medical practitioners to have the powers and duties of certifying surgeons under this Act (see p. 152).

By subsec. 6 he may make orders extending the number of diseases and processes to which this section applies (see p. 152). Such orders have been made and are set out in Appendix I.

By subsec. 7 he may, on certain conditions, require employers in any industry to insure against risks under this section (p. 153).

2. *Medical Referees.* — The Home Secretary may appoint legally qualified medical practitioners to be medical referees for the purposes of this Act (sec. 10, p. 158).

3. *Returns of Compensation.*—The Home Secretary may direct that in any industry every employer must

Digitized by Google

annually make a return showing the number of cases in which compensation has been paid and the amount of such compensation, together with such other particulars as the Home Secretary may direct (sec. 12, p. 164). For these regulations see Appendix H.

4. *Examination of Workmen.*—By Sched. 1, para. 15 (p. 222), a workman shall not be required to submit himself to examination by a medical practitioner under pars. 4 and 14 of Sched. I. otherwise than in accordance with regulations made by the Home Secretary, or at more frequent intervals than may be prescribed by those regulations. And the same paragraph provides that a medical referee shall conduct his inquiry into a workman's condition subject to such regulations. These regulations are set out in Appendix F.

5. *Committee.*—By Sched. II. para. 16 (p. 262), the Home Secretary may confer on any committee representative of an employer and his workmen, in regard to any matter in which the committee act as arbitrators or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or county court judges, and in such cases may make other necessary modifications.

C. *Medical Men.*

The Act deals with three classes of medical men—

(i) *Certifying surgeons.*
(ii) *Medical practitioners.*
(iii) *Medical referees.*

(i) *Certifying surgeons.*—These officers are appointed under the Factory and Workshops Act, 1901 (see p. 144), and their duties under this Act all arise under sec. 8 (which deals with industrial diseases).

By sec. 8, subsec. 1 (i), where the certifying surgeon for the district in which the workman is employed certifies that the workman is suffering from a disease mentioned in Sched. III., and is thereby disabled from

Digitized by Google

earning his full wages, *and* the fact is that the disease is due to the nature of his employment, the workman becomes entitled to compensation (p. 143).

By subsec. 2 the disease is in certain cases to be deemed to be due to the nature of the employment, unless the certifying surgeon certifies that in his opinion it is not so due (p. 149).

By subsec. 4 the date of disablement shall be taken to be such date as the certifying surgeon certifies as the date on which the disablement commenced (p. 151).

By subsec. 1 (*f*), if either the employer or the workman is aggrieved by the action of the certifying surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman, the matter is to be referred to a medical referee (p. 149).

By subsec. 5 the Home Secretary may appoint legally qualified medical practitioners to have the powers and duties of certifying surgeons under this section (p. 152).

(ii) *Medical practitioners.*—A medical practitioner is a person registered under the Medical Act, 1858. Their duties as such under this Act are concerned with the medical examination of workmen.

By Sched. I. para. 4 (p. 212), when a workman has given notice of an accident, he shall, if so required by the employer, submit himself to examination by a legally qualified medical practitioner provided and paid by the employer. If he refuses to do so, his rights under the Act are suspended during the refusal.

By Sched. I. para. 14 (p. 220) a workman receiving weekly payments may in the same circumstances as in para. 4 (supra) be required to submit himself to a medical examination.

By Sched. I. para. 15 (p. 222) a workman shall not be required to submit himself to a medical practitioner for examination under paras. 4 and 14 otherwise than in accordance with regulations made by the Home Secretary, or at more frequent intervals than may be prescribed

LIBRARY OF THE UNIVERSITY OF CALIFORNIA
Digitized by Google

by such regulations. These regulations are set out in Appendix F.

Notice also that a medical practitioner may be appointed by the Home Secretary to have the powers and duties of a certifying surgeon under this Act (supra).

(iii) *Medical Referees.*—By sec. 10 (p. 158) the Home Secretary has power to appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine; and provision is made for the payment of their remuneration and expenses.

Their duties are—

(*a*) *Industrial Diseases.*— Under sec. 8, subsec. 1 (*f*) (p. 149), where either the employer or the workman is aggrieved by the action of the certifying surgeon in giving or refusing to give a certificate of disablement, or in suspending or refusing to suspend a workman for the purposes of that section, the matter is to be referred to a medical referee, whose decision shall be final.

This reference is to be governed by the rules made by the Home Secretary (see Appendix E).

By subsec. 4 (*a*) it is provided that where a medical referee allows an appeal against a refusal by the certifying surgeon to give a certificate, the date of disablement shall be taken to be such date as the medical referee may determine (see p. 151).

(*b*) *Examination of Workmen.*—By Sched. I. para. 15 (p. 222) where a workman has submitted himself to examination by a medical practitioner under Sched. I. paras. 4 and 14 (supra), or has been examined by a medical practitioner selected by himself, then if the employer and workman cannot come to an agreement as to the workman's condition or fitness for employment, the registrar may, on application being made by both parties and on payment by the applicants of such fee not exceeding £1 as may be prescribed, refer the matter to a medical referee.

Digitized by Google

The medical referee has then to give a certificate as to the workman's condition and his fitness for employment, and that certificate is conclusive evidence as to the matters so certified.

It is also provided in this paragraph that when no agreement can be come to between employer and workman on the question of whether the incapacity is due to the accident, the matter may in the same way be referred to a medical referee. If the workman refuses to be examined by the medical referee, or obstructs the examination, the right to compensation shall be suspended for so long as such obstruction lasts.

The regulations made by the Home Secretary under this paragraph are set out in Appendix G.

The procedure in applications under this paragraph is governed by Rule 54 (p. 305).

(*c*) *Assessor.*—By Sched. II. para. 5 (p. 243) the county court judge may, if he thinks fit, summon a medical referee to sit with him as an assessor.

For the procedure under this paragraph see Rule 52 (p. 304).

(*d*) *Report to Arbitrator.*—By Sched. II. para. 15 (p. 262) any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State or the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration. Such a "report" differs from a "certificate," as the tribunal is not bound to act upon it.

The regulations made under this paragraph are set out in Appendix G.

The procedure under it is governed by Rule 53 (p. 305).

D. *Other Bodies.*

The following persons and bodies also have duties to perform under this Act :—

(i) *The Chief Registrar of Friendly Societies.*—His

Digitized by Google

duties are concerned with the certifying and superintending of "schemes" made for the purpose of contracting out of this Act under secs. 3 and 15 (pp. 104 and 187). The regulations made by him are set out in Appendix D.

(ii) *Consular Officers.*—Under sec. 7 (which deals with the application of this Act to seamen) it is provided (by subsec. 1 (*c*)) that where an injured master seaman or apprentice is left behind in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any British consular officer in the foreign country and transmitted to the Board of Trade, and shall then be admissible in evidence in all proceedings for enforcing the claim (see p. 134). If the seaman is left in a British possession, the depositions can be taken by any judge or magistrate in that possession.

(iii) *The Treasury.*

(*a*) By sec. 9, subsec. 2, the Treasury is empowered to modify for the purposes of this Act their warrant under the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act (see p. 156).

(*b*) Under sec. 10, subsec. 1, the Treasury have to sanction the appointment of medical referees by the Home Secretary, and have to make regulations determining the amount of their remuneration (p. 158). For the regulations so made see Appendices E and G.

(*c*) Under sec. 10, subsec. 2, the Treasury have to make regulations regulating the remuneration payable to arbitrators appointed by the county court judge (see p. 158).

(*d*) It is provided by Sched. I. para. 12 that no money invested in the Post Office Savings Bank by the Registrar under this Act shall be paid out except upon authority addressed to the Postmaster-General

Digitized by Google

by the Treasury, or, subject to regulations of the Treasury, by the county court judge or Registrar (p. 219).

(*e*) Under Sched. I. para. 15 the Treasury have to give their consent to the rule fixing the fee payable to the medical referee under that paragraph (see p. 223). And see Rule 82 (p. 325).

(*f*) Under Sched. II. para. 15 the regulations regulating the method of submitting matters to the medical referee for his report by the committee, arbitrator, or judge have to be jointly made by the Home Secretary and the Treasury (see p. 262). Such regulations are set out in Appendix G.

Digitized by Google

Digitized by Google

THE WORKMEN'S COMPENSATION ACT, 1906

(6 EDW. VII. C. 58)

AN ACT TO CONSOLIDATE AND AMEND THE LAW WITH RESPECT TO COMPENSATION TO WORKMEN FOR INJURIES SUFFERED IN THE COURSE OF THEIR EMPLOYMENT

SECTION I

Sec. 1, Subsec. 1.

1. If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this Act.

The corresponding section of the Workmen's Compensation Act, 1897, is in almost exactly the same words. The only difference is that the word "employment" is limited by "to which this Act applies" (see introductory chapter). In considering the various points which arise, the decisions under the Workmen's Compensation Act, 1897, may accordingly be looked on as authorities.

Employment.—There is hardly any form of industry to which this Act does not apply. The Workmen's Compensation Act, 1897, was experimental and introduced a totally new principle into our legislation. For that

Digitized by Google

reason it was only made applicable to a few industries, which were selected because of their dangerous character. The experiment was found to work well and the principle has therefore by the present Act been extended to all forms of employment.

There are, however, still one or two industries of a very special character to which the Act does not apply.

(*a*) The Act does not apply to persons in the naval or military service of the Crown (see sec. 9, subsec. 1, and note thereon, p 156).

(*b*) The Act does not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel (see sec. 7, subsec. 2, and note thereon, p. 142).

(*c*) There are certain classes of employees who are not workmen within the meaning of this Act, *e.g.*, policemen. This, however, is not because any form of employment is excluded, but is the result of the interpretation put upon the word "workman" (see note on sec. 13 at p. 167).

Personal Injury by Accident.—The meaning of the words "injury by accident" has been the subject of a great number of decisions, both at common law and under the Workmen's Compensation Act, 1897. The question is not yet finally settled, but the four following propositions are, it is submitted, established by the cases.

(i) The accident must be something fortuitous and unexpected (*Hamlyn* v. *Crown Accident Insurance Company* [1893], 1 Q.B. 750).

(ii) An internal injury, such as a strain, may be caused by "accident," although brought about without any visible external violence or merely by the muscular effort made by the workman in doing his ordinary work (*Fenton* v. *Thorley* [1903], A.C. 443).

(iii) If a disease is brought about by a single unexpected and fortuitous event, it is "an injury by accident" (*Brintons, Ltd.* v. *Turvey* [1905], A.C. 230).

Digitized by Google

(iv) If a disease is brought about by a gradual infection, it is not an injury by accident (*Steel* v. *Cammell Laird & Co.* [1905], 2 K.B. 232).

The first case to consider is *Hamlyn* v. *Crown Accidental Insurance Company* ([1893], 1 Q.B. 750). In that case the Court of Appeal had to decide what was the meaning, in a policy of insurance, of the clause "any bodily injury caused by violent, accidental, external, and visible means." The plaintiff had stooped down to pick up a marble, and in doing so had dislocated the cartilage of his knee. He had had no previous weakness of the knee or knee-joint. The Court held that this was bodily injury caused by violent, accidental, external, and visible means. Lopes, L. J., uses this expression (at p. 754): "The cause of the injury was accidental in the sense that the injury was a casualty, and unforeseen, and unexpected."

In *Pugh* v. *London, Brighton and South Coast Railway Company* ([1896] 2 Q.B. 248), the plaintiff was a signalman in the employ of the defendant railway company, who had insured him against injury by accident in the performance of his duties. While in his signal-box he saw a train approaching, and perceived from the condition of one of the carriages that an accident was imminent. He was able to make a sign to the driver, who stopped the train in time to prevent a disaster; but the excitement and fright caused by this incident so worked upon the plaintiff's nervous system that he was incapacitated from work for a considerable period. It was held that this was an accident. Lord Esher says: "The fright which he underwent seems to me to be the accident which happened in this case."

In *Lloyd* v. *Sugg* ([1900] 1 Q.B. 481), the respondent claimed compensation under the Workmen's Compensation Act, 1897. At the time of the accident the respondent was holding a "flatter" on the anvil for another workman, and the latter by accident struck the wrong end of the flatter and jarred the respondent's hand. In conse-

Digitized by Google

quence of this the hand became swollen and gout in the hand was brought on. The doctor who attended the respondent stated that he had attended the respondent previously to the accident for gout in the hand, and that he thought the swollen hand was caused by gout brought on by the jar. This was held by the Court of Appeal to be evidence of injury by accident. A. L. Smith, L.J., said: "The evidence showed that the miss-hit by the hammer jarred the respondent's hand. That miss-hit was an accident."

In *Thompson* v. *Arlington Coal Company, Ltd.* (84 L.T. 412), a miner was employed in hewing coal, and while so engaged a piece of coal worked itself into his knee, with the result that blood-poisoning set in and he died. The Court of Appeal held this to be an accident. A. L. Smith, M.R., said: "If any one were to kneel down in a drawing-room and a needle ran into his knee, that would clearly be an accident."

In *Timmins* v. *Leeds Forge Company, Ltd.* (16 T.L.R. 521), a man was employed in moving heavy planks from one pile to another. During a frost the planks became frozen together, so that it was difficult to separate them. In attempting to do so the workman sustained an injury. On these facts the Court of Appeal held that there was evidence on which the county court judge could find that the injury was caused by an accident.

On the other hand, in *Walker* v. *Lilleshall Coal Company* ([1900] 1 Q.B. 481) a man, who had a blister on his hand, was made ill by red lead getting into the blister. This was not an accident.

In *Hensey* v. *White* ([1900] 1 Q.B. 481), which has now been expressly overruled by the House of Lords in *Fenton* v. *Thorley* ([1903] A.C. 443), a man who suffered from inflammation of the stomach attempted to move a wheel which had become fast, and thereby fatally injured himself. It was held that there was no evidence of an accident, the Court of Appeal founding their judgments on Lord Halsbury's speech in *Hamilton Fraser & Co.* v.

Digitized by Google

Pandorf (12 A.C. 518). And compare with this the case of *Roper* v. *Greenwood* (83 L.T. 471), where a woman internally strained herself while at work as a boxmaker, and it was held that this was not an accident.

The three cases of *Hensey* v. *White*, *Lloyd* v. *Sugg & Co.*, and *Walker* v. *Lilleshall Coal Company, Ltd.*, are reported together in the Law Reports ([1900] 1 Q.B. 481). The combined headnote there is: "The word 'accident,' as used in the Workmen's Compensation Act, 1897, involves the idea of something fortuitous and unexpected. Where a workman suffers injury while doing his ordinary work in his ordinary way, and the primary and efficient cause of the injury is his diseased or impaired physical condition at the time, the injury is not caused by accident within the meaning of the Act. Where, however, injury is caused to a workman by some fortuitous and external event, it is caused by accident within the meaning of the Act, although the injury may be aggravated by his physical condition at the time of the accident."

So far as this statement is gathered from *Lloyd* v. *Sugg & Co.* and *Walker* v. *Lilleshall Coal Company*, it is still good law, but *Hensey* v. *White* has been overruled by the House of Lords in *Fenton* v. *Thorley* ([1903] A.C. 443). In that case the workman was employed in working some machinery, and ruptured himself by an act of over-exertion in trying to turn a wheel. The House of Lords decided that this was an injury by accident, expressly overruling *Hensey* v. *White*. They said that the word "accident" in the Act of 1897 is used in a popular sense, and that therefore too much reliance should not be placed on constructions put upon insurance policies and other contracts. The following passage occurs in Lord Robertson's speech at p. 452: "Much poring over the word 'accident' by learned counsel has evolved some subtle reasoning about these sections. I confess that the arguments seem to me to be entirely over the heads of Parliament, of employers, and of workmen. No one out of a law-court would ever hesitate to

Digitized by Google

say that this man met with an accident, and, when all is said, I think this use of the word is perfectly right. The word 'accident' is not made inappropriate by the fact that the man hurt himself. This use is indeed directly sanctioned by the Act itself; for sec. 1, subsec. 2 (*c*), plainly implies that an accident giving right to compensation may be attributable to the fault of the injured man himself. In the present instance the man by an act of over-exertion broke the wall of his abdomen. Supposing he had by the same act broken his leg, the question would be the same. But suppose the wheel had yielded and been broken by exactly the same act, surely the breakage would be rightly described as accidental. Yet the argument against the application of the Act is in this case again exactly the same—that there is nothing accidental in the matter, as the man did what he intended to do. The fallacy of the argument lies in leaving out of account the miscalculation of forces, or inadvertance of them, which is the element of mischance, mishap, or misadventure."

In this case the House of Lords cited with approval the decision of the Court of Session in *Stewart* v. *Wilsons and Clyde Coal Company* (5 F. 120), where a workman strained his back while attempting to replace a derailed coal-hutch on the rails. Lord Maclaren in that case said: "I think it is impossible so to limit the scope of the statute, and if a workman, in the reasonable performance of his duties, sustains a physiological injury as the result of the work he is engaged in, I consider that this is accidental injury in the sense of the statute."

In accordance with this principle is the decision in *Boardman* v. *Scott* ([1902] 1 K.B. 43), where a man strained himself by lifting a heavy beam. It was held that this was an accident.

By this time therefore two propositions were settled—(i) that an accident is something fortuitous and unexpected; and (ii) that an internal injury, such as a strain or collapse from a fright, may be caused by an acci-

Digitized by Google

dent, although brought about without any visible external violence or merely by the muscular effort made by the workman in doing his ordinary work.

The question then arose as to whether an infectious disease brought on by the "accidental" entering of a bacillus into the workman's system could be an "injury by accident" within the meaning of this Act. This point came before the House of Lords in the case of *Brintons, Ltd.*, v. *Turvey* ([1905] A.C. 230). There the workman was employed in sorting wool in a factory, and while he was so engaged a bacillus passed from the wool into his eye and infected him with anthrax, from which he died. The majority of the House of Lords held this to be an injury by accident. Lord Halsbury in his speech explained that in one sense nothing is an accident. If we knew enough about physical causes, we could tell with certainty where any particle of dust swept by a storm would alight. Therefore in construing this Act we must put the popular interpretation on the word "accident." That interpretation excludes idiopathic diseases, but includes an illness brought about by an external happening. Thus anthrax is an injury by accident, the accident being the entry of the bacillus into the body, and so is tetanus, which is brought on by a cut or scratch.

But even if the disease is brought on by a single event, it is not an injury by accident, unless such event is fortuitous and unexpected. Thus where a workman contracted "enteritis" through a bacillus attacking his lungs, it was held not to be an accident, as it was a well-known risk of the particular employment in which the workman was engaged (*Broderick* v. *London County Council* [1908], 2 K.B. 807).

On the other hand, an illness brought on gradually by the unhealthy nature of the employment is not an "injury by accident." This is the result of the decision in *Steel* v. *Cammell Laird & Co., Ltd.* ([1905], 2 K.B. 232). In that case the workman was engaged in smearing red and white lead upon rope yarn with his hands.

Digitized by Google

Gradually, as a result of this work, his system became saturated with lead. In time he was seized with cramp, and finally became paralysed and unfit for work. The Court of Appeal held that this was not an injury by accident, as it was not due to a single unexpected event. The Court laid stress on the fact that it would be impossible in such a case to fulfil the conditions of sec. 2, subsec. 1, of the Workmen's Compensation Act, 1897, as to giving notice of the day on which the accident occurred.

Steel v. *Cammell Laird & Co.* was followed in *Marshall* v. *East Holywell Coal Company, Ltd.*, and *Gorley* v. *Owners of Backworth Collieries.* These two cases were heard together, and are reported at 21 T.L.R. 494. In the first one a miner had contracted a disease of the hand, known as "beat hand," from continually jarring his hand as he used his pick. In the other a miner had contracted the similar disease of "beat knee" from the friction caused to his knee by continual work in a kneeling position. In both cases the Court held that there was no injury by accident. Collins, M.R., said "an accident must be something which is capable of being assigned to a particular date, and which was in the ordinary and popular sense an accident." But in this connection the case of *Golder* v. *Caledonian Railway* (5 F. 123), should be noticed. There the evidence was that previous to the accident the workman was suffering from a disease, nephritis, which would have caused his death in a few years. The accident accelerated his death. It was held that the death was due to the accident. And in *Ismay* v. *Williamson* ([1908] A.C. 437) the majority of the House of Lords decided that it was an "accident" where a stoker on board a ship fell into a faint from heat stroke and died.

These cases therefore establish these two further propositions with regard to diseases:—

(iii) If the disease is brought about by a single unexpected and fortuitous event, it is an "injury by accident."

(iv) If the disease is brought about by a gradual infection, it is not an "injury by accident."

Digitized by Google

Besides the cases dealt with above, the following throw light on the meaning of "accident": *Sinclair* v. *Maritime Passengers Company* (30 L.J.Q.B. 77); *Winspear* v. *Accident Insurance Company, Ltd.* (6 Q.B.D. 42); *Martin* v. *Travellers Insurance Company* (1 F. & F. 505).

Sec. 8 of this Act gives the workman a right to be compensated if he contracts certain specified diseases, although the circumstances do not amount to "injury by accident." It may therefore sometimes happen that the workman has an alternative remedy, and has to choose whether to proceed under sec. 1 or sec. 8. His advisers would then have to consider which date it was more advisable to treat as the one on which the right to compensation accrued, the date of the accident or the date of the "disablement or suspension" mentioned in sec. 8. This might be important if his wages at these two dates were different. On this point see the note to sec. 8 at p. 145.

Arising out of and in the course of the employment. Whether or not a particular accident arises out of or in the course of the employment is principally a question of fact, but certain principles have been laid down in the cases. Two classes of cases arise as to the meaning of these words, which occur also in the Act of 1897—

(*a*) Cases as to the time and place where the accident occurs.

(*b*) Cases as to the nature of the act which causes the injury.

(*a*) *Cases as to the Time and Place where the Accident occurs.*—There are a great number of reported cases on this point, and it is not easy to reconcile them; but it is submitted that the two following propositions may be elicited—

1. The workman is protected during the hours of employment, and for the rest of the day is in no better position than a member of the public (see *Benson* v. *The Lancashire and Yorkshire Railway Company* [1904], 1 K.B. 242). But "work" and "employment" are not

Digitized by Google

co-extensive, and the "employment" may have commenced before any work has been done (*Holness* v. *Mackay and Davis* [1899], 2 Q.B. 319).

2. The workman is protected on his way to and from work so long as he is properly on premises under the control of his employer (see per A. L. Smith, L.J., in *Holness* v. *Mackay*, supra).

In *Holness* v. *Mackay and Davis* ([1899], 2 Q.B. 319) the employers were a firm of contractors who were at work upon a railway siding. This siding could only be reached by walking for a considerable distance on the railway company's premises. A workman in the employ of the contractors, while on his way to his work at the siding on a foggy morning, seven minutes before the hour for the commencement of the day's work, was run over by a train and killed. It was held by A. L. Smith, L.J., and Vaughan Williams, L.J. (Romer, L.J., dissenting), that it was no part of the contract of employment that the employment should include the time taken in getting to and from the work, that under the cirumstances the contractors owed no duty to the workman while proceeding to his work, and that therefore the accident did not arise out of and in the course of the employment. A. L. Smith, L.J., in his judgment draws a distinction between places which are and places which are not under the employer's control. He says: "It has been urged on behalf of the respondent that the case is like that of a man who is employed in a large quarry and who is killed in the quarry while going to his work in a particular portion of it, or that of a man who, while going to his work on the upper floor of a large factory, is killed in a lower floor of the factory while on his way to his work. But those are very different cases; there the employer has the control over the whole quarry or factory, and I am not prepared to say that an accident happening in a downstairs room to a man on his way to his work in an upstairs room would not be within the Act, but I do not decide it; I leave this open. With

Digitized by Google

all respect to the learned counsel's argument, those cases are very different; in the case of a quarry or a factory the employer has the control over the whole of the premises; here the appellants had no control over the railway premises except that part where the work under their contract was being actually performed, for the mere licence to use the premises to get to the locality of the work gave the contractors no right of control over the portion along which they passed or over the trains running thereon. The present case seems to me like the case of a man who meets with an accident while passing along a highway or any other way in order to get to his work. I do not think that it was part of the contract of employment that the employment should extend till the deceased got to the place where his work was, or rather should include the time taken in getting to that place, nor can I hold that he had in contemplation of law begun his work when he had not got to the place where his work lay and the time for commencing work had not arrived."

His lordship then distinguished this case from two cases at common law, which had been quoted in argument, *Brydon* v. *Stewart* (2 Macq. 30), where a pitman wished to come to the surface on business of his own, and was killed by the insecure state of the shaft; and *Tunney* v. *Midland Railway Company* (L.R. 1 C.P. 291), where a workman was injured in a pick-up train on his way to work. In both these cases the conveyance of the workman to and from the work was part of the contract of service. We may take it, therefore, that the protection of the Act extends to cases where the workman is properly on premises under the control of his employer for the purpose of going to or returning from his work. The other cases here given are merely illustrations of this principle.

In *Gibson* v. *Wilson* (38 S.L.R. 450) the workman was employed in repairing a church. On going to his work one morning he found the gate of the churchyard locked. He therefore proceeded to climb the railings and in doing so spiked his foot. This caused tetanus, from which he

Digitized by Google

died. It was held that this was not an accident arising out of and in the course of his employment—the workman was not at the time on premises under the control of his employer.

In *Davies* v. *Rhymney Iron Company* (16 T.L.R. 329) the appellant was a collier. His employers owned a line of railway, along which they ran a train to take the colliers to and from their homes. The colliers did not pay for the use of the train, and it was at their option whether or not they used it. The appellant was injured in alighting from this train at a spot three-quarters of a mile from the colliery, whilst returning from work. The Court of Appeal held that this did not arise out of or in the course of his employment.

In *Benson* v. *The Lancashire and Yorkshire Railway Company* ([1904], 1 K.B. 242) an engine-driver in the employ of a railway company had, in order to commence his day's work, to go in the morning to the company's engine-shed. His proper route to the engine-shed was through a gate opening from the public road on to the railway, and thence by a pathway which did not cross the rails. One morning, on getting through the gate, instead of going along the pathway towards the engine-shed, he went in the opposite direction towards the signal-box, in order to get some information for his own purposes from the signalman. This box was in the middle of the lines. After obtaining the information he required, he proceeded from the signal-box towards the engine-shed along the railway. Some time afterwards he was found lying on the line seriously injured, having presumably been run down by an engine, and he subsequently died of his injuries. It was held that this was not an accident arising out of and in the course of his employment. Collins, M.R., said: "It seems to me, with regard to a person who is employed for a certain period, either of the day or night, that during the period that he is so employed he is entitled to the privileges given by the Act; but from the time when he leaves off work, say in the

Digitized by Google

evening, until he arrives at the spot where his employment is to commence again next morning, he is in the same position, as regards his employers, as any other member of the public, and is not within the protection of the Act. If he chooses to take a dangerous route to that spot, he takes it at his own risk."

On the other hand, however, there are certain cases where a workman has recovered compensation although he had not actually commenced to work at the time of the accident. But these cases are not inconsistent with the dictum of the learned Master of the Rolls cited above, for in accordance with the principle laid down in *Holness* v. *Mackay and Davis* (supra) it may well be that the employment has commenced although no work has been done. For instance, in *Holmes* v. *Great Northern Railway Company* ([1900], 2 Q.B. 409), an engine-cleaner who had been employed by the Great Northern Railway at King's Cross was told one evening that on the next day he was to work at Hornsey. Accordingly on the next morning he presented himself at King's Cross and was conveyed by the company free of charge in one of their trains to their station at Hornsey, reaching there a short time before the hour for commencing work in the shed. Shortly before the hour at which work began he was killed by a passing train. It was held that his employment commenced when he got into the train to be conveyed to his work, and not on his arrival at the engine-shed, and therefore that the accident arose out of and in the course of his employment.

Somewhat similar is the case of *Sharp* v. *Johnson & Co., Ltd.* ([1905], 2 K.B. 139). Workmen in the employ of a building contractor were brought daily by train from London to certain building works in the country. The only available train arrived twenty minutes before the time for starting work. The workmen were provided with tickets, which they had to give in to a collector before starting work. It was their custom to give in their tickets first and then proceed to a

Digitized by Google

refreshment shed on the premises, where they waited till the twenty minutes had elapsed. One of the workmen was injured whilst on his way to give up his ticket. It was held that this was an accident arising out of and in the course of his employment.

In *Blovelt* v. *Sawyer* ([1904] 1 K.B. 271) a workman was paid by the hour for the number of hours per week that he was actually engaged on his work, not including the mid-day dinner-hour. During that hour he was at liberty to stay and take his meal on the premises or to go elsewhere. He stayed on the premises and sat down to eat his dinner, and while so doing a wall fell upon him and he was injured. It was held that during the dinner-hour there had been no break in the employment of the workman, and therefore that he was entitled to claim compensation.

In *Keenan* v. *Flemington Coal Company* (5 F. 164), a miner left the pithead to go and get a drink of water. Whilst so doing he was killed by a runaway hutch. It was held that this accident arose out of and in the course of his employment.

In *Caton* v. *Summerlee and Mossend Iron Company* (4 F. 989) a workman was killed whilst going home from work on a private line of railway, the property of his employer, at a distance of 230 yards from their works. This was held to arise out of and in the course of the employment. And in *Mackenzie* v. *Coltness Iron Company* (6 F. 8) a workman was awarded compensation where, on his way to work at a mine, he had slipped and injured himself on a line of railway, the property of his employers. In *Haley* v. *United Collieries* ([1907], S.C. 214), a miner left his work by a short cut, which was on the employers' premises but was not the proper way for him to go by. It was held that an accident which he sustained while going along this short cut did not arise out of and in the course of his employment. An important case is *Mitchell* v. *Glamorgan Coal Company* (23 T.L.R. 588). There a workman had died of blood-

Digitized by Google

poisoning caused by an injured finger. The only evidence was that his finger was all right when he left home one morning, but was injured when he returned. It was held by the Court of Appeal that the county court judge might draw the inference that the accident arose out of and in the course of the employment, for accidents were more likely to happen to a man while at work than on his way backwards and forwards.

In *Cremin* v. *Guest, Keen, and Nettlefolds, Ltd.* ([1908], 1 K.B. 469), the first case on this point under the present Act, it was a part of the contract of employment between a colliery company and their miners that the latter should be conveyed to and from the work by train free of charge. A miner was killed while so travelling, and it was held that the accident arose out of his employment. Cozens-Hardy, M.R., pointed out that although this Act omits the "local condition" of the accident happening "on, in, or about" premises, it is still as necessary as it was under the old Act to prove that the accident arose "out of and in the course of the employment." And in *Robertson* v. *Allan* (98 L.T. 821) it was held that the accident arose "out of and in the course of the employment," where the steward of a ship, who had been on shore and was the worse for drink, fell into the hold and was killed while attempting to board the ship by means of the "cargo skid." But in *Whitbread* v. *Arnold* (99 L.T. 103), where a shepherd was killed by falling from a waggon in which he was being driven to a farm for the purpose of commencing his employment, it was held that, although there was a contract of service, the employment did not commence when he left his home in the farmer's waggon, but would have commenced at the earliest period at which he could have begun his duties, and, therefore, that the accident did not arise "out of and in the course of the employment."

Other cases which throw light on this point are *Vickery* v. *Great Eastern Railway Company* (14 T.L.R. 562), *Todd* v. *Caledonian Railway* (36 S.L.R. 784)

Digitized by Google

McAllen v. *Perthshire County Council* (8 F. 783), *Lowry* v. *Sheffield Coal Company* (24 T.L.R. 142), *Macdonald* v. *Owners of the* s.s. "*Banana*" ([1908] 2 K.B. 926).

(*b*) *Cases as to the Nature of the Act which causes the injury.*—The other class of case which has to be considered in construing the expression "arising out of and in the course of the employment" arises where it is the nature of the act which caused the injury which has to be considered. This is quite a distinct point from the questions of time and place which have just been dealt with.

Although this also is chiefly a question of fact, the cases enable us to see certain broad principles.

Thus we may say generally (i) that so long as the workman is about his master's business he is within the Act and (ii) that so soon as he ceases to be about his master's business he is without the Act.

But the first of these propositions needs qualifying. For it may be that while engaged on the master's business the workman is injured by the wilful act of a stranger, or by some outside agency, such as lightning. One has then to consider whether or not the risk of such injury is incidental to the particular employment. If it is—as, *e.g.*, if an engine-driver is killed by a stone thrown at his train by a stranger, he is within the Act (*Challis v. London and South Western Railway Company* [1905], 2 K.B. 154, infra, p. 66). But if it be not so incidental, then he is without the Act—as, *e.g.*, if he is hurt as the result of horseplay between his fellow-workmen (*Falconer v. London and Glasgow Engineering Company*, 3 F. 564).

The first case to consider is *Smith* v. *Lancashire and Yorkshire Railway Company* ([1899], 1 Q.B. 141.) There a ticket collector got upon the footboard of a train after it had started, not for any object of his employment, but to talk to a passenger for his own amusement. He was injured in getting off. The Court of Appeal held that this was not an accident arising out of his employment within sec. 1 of the Workmen's Compensation Act, 1897,

Digitized by Google

and he was not entitled to recover compensation. The case of *Lowe* v. *Pearson* ([1899] 1 Q.B. 261) is somewhat similar in principle. There a boy was employed in a pottery, and it was his duty to make balls of clay and hand them to a woman working at a machine, and he was forbidden to interfere in any way with the machinery. He sustained an injury through attempting to clean the machine while the woman was absent. Here also the Court of Appeal decided that the accident did not arise out of and in the course of his employment. A. L. Smith, L.J., points out that this is not a case of a servant doing something in an emergency in his master's interest; the boy was doing something which he had no right to do and which was in no sense a part of his employment.

The case of the emergency suggested by A. L. Smith, L.J., in the last case arose in *Rees* v. *Thomas* ([1899], 1 Q.B. 1015). There a fireman employed in a coal-mine was, in the course of his duty, carrying a report of the state of the mine from the pit's mouth to the office; the horse drawing the tramway truck in which he was ran away, and in endeavouring to stop it he fell and was killed. The Court of Appeal held that this case fell within the Act. A. L. Smith, L.J., said: "It is said that it did not arise out of his employment, because it was the result of a voluntary act on his part—that is, of his attempt to stop the horse. But the deceased was acting in the interest of his master in an emergency which suddenly arose, and in which any one would, I should think, have tried to do the same thing."

In the same way in the Scotch case of *Devine* v. *Caledonian Railway* (1 F. 1105) compensation was awarded to a carter who was injured while trying to stop his horse, which had run away from in front of his master's premises; and compare with this *Goslan* v. *Gillies* ([1907], S.C. 68), where a clerk in engineering works left his own task to assist a fellow-workman in carrying a load, and was injured whilst so doing. This

Digitized by Google

case was held to be within the Act; also *London and Edinburgh Shipping Company* v. *Brown* (7 F. 488), where a workman in the employ of a stevedore volunteered to go into the hold of a ship to rescue a fellow-workman overcome by noxious fumes, compensation was awarded; compare also *Menzies* v. *M'Quibban* (2 F. 732).

In *Harrison* v. *Whitaker* (64 J.P. 54) a boy was employed to grease the wheels of railway trucks. Having greased all that were ready, and while waiting for more to come up, he sat down on a point lever in front of a fire which was a short distance away. Seeing an engine coming up and thinking that the points were in the wrong position, the boy pulled the lever, but the engine forced the points open, with the result that he was thrown against the engine by the lever and injured. It was held by the Court of Appeal that under these circumstances the county court judge was right in awarding compensation.

In *Whitehead* v. *Reader* ([1901], 2 K.B. 48) a workman was employed as a carpenter, and had, as part of his duty, to sharpen his tools on a grindstone rotated by machinery. He had received orders not to touch the machinery. In spite of this, he endeavoured to replace the band of the machine, which had slipped from its position. In so doing he was injured. It was held by the Court of Appeal that this was an accident arising out of and in the course of his employment, Collins, L.J., said: "I agree with what has already been pointed out, that it is not every breach of a master's orders that would have the effect of terminating the servant's employment so as to excuse the master from the consequences of the breach of his orders. We have to get back to the orders emanating from the master to see what is the sphere of employment of the workman, and it must be competent to the master to limit that sphere. If the servant, acting within the sphere of his employment, violates the order of his master, the latter is responsible. It is, however, obvious that a workman

Digitized by Google

cannot travel out of the sphere of his employment without the order of his employer to do so; and if he does travel out of the sphere of his employment without such an order, his acts do not make the master liable either to the workman under the Workmen's Compensation Act, 1897, or to third persons at common law."

The opposite case to this is *Smith* v. *South Normanton Colliery Company, Ltd.* ([1903], 1 K.B. 204). In that case a miner disobeyed the orders of his superior, and was therefore suspended from work. Men were not allowed to remain in the colliery when not at work, and this man was ordered to wait at the pit bottom till the cage ascended. Instead of doing so, he waited somewhere else in the mine, and was injured by a fall of coal while so waiting. It was held that this was not an accident arising out of or in the course of his employment.

Notice also the case of *Pomfret* v. *Lancashire and Yorkshire Railway Company* [1903], 2 K.B. 718, where it was held that the burden of proving that the accident arose out of and in the course of the employment is on the applicant. A workman was killed by falling from a train in which he was travelling. This was admitted to be in the course of his employment, and the only question in dispute was whether the accident arose "out of" his employment. There was no evidence, one way or the other, as to how he came to fall out. The county court judge had made an award, but the Court of Appeal sent the case back to him. On the further hearing, evidence as to how the accident came about was forthcoming, and a second award was therefore upheld by the Court of Appeal.

It only remains to consider the cases referred to above, where the injury has been caused by the wrongful act of a stranger. The first of these is *Falconer* v. *London and Glasgow Engineering Company* (3 F. 564), where a workman in the course of his employment met with an

Digitized by Google

accident caused by his fellow-workmen, who, at the time, were not engaged at their work, but were indulging in horse-play. It was held by the Court of Session that these facts did not bring the workman within the Act.

On the other hand, in *Challis* v. *London and South Western Railway Company* ([1905], 2 K.B. 154) compensation was awarded to the dependants of a workman under the following circumstances. The deceased was an engine-driver, and, while his train was passing under a bridge a boy on the bridge wilfully dropped a stone on to the train. The stone broke the glass of the cab. Fragments of broken glass entered the deceased's eye and caused the injuries from which he died. Collins, M.R., founded his judgment on the fact that the throwing of stones at railway trains is so common and well-known a thing as to be a risk incidental to the employment of an engine-driver. "The interpretation," said his lordship, "of the words 'accident arising out of and in the course of the employment' appears to me necessarily to involve the consideration of the question what risks are commonly incidental to the particular employment in question."

This case must be distinguished from *Armitage* v. *Lancashire and Yorkshire Railway Company* ([1902], 2 K.B. 178), where one boy, throwing a piece of iron at another, missed his mark and hit the applicant. This act of the first boy had no relation whatever to the employment, nor was the risk of such a mishap incidental to the employment; and therefore compensation was not awarded. And this has been followed in the recent case of *Fitzgerald* v. *Clarke* ([1908], 2 K.B. 796), where the workman was injured as a result of the tortious act of his fellow workmen, who had hoisted him up in a crane, from which he fell. It was held that this accident did not arise "out of and in the course of the employment."

Wicks v. *Dowell & Co., Ltd.* ([1905], 2 K.B. 225), is a curious case. A workman employed in unloading coal from a ship, who was required in the course of his

Digitized by Google

duty to stand by the open hatchway through which the coal was being brought up from the hold, was seized with an epileptic fit while at work and fell into the hold and was seriously injured. It was held in the Court of Appeal that regard must be had to the proximate cause of the accident resulting in the injury, which was to be found in the necessary proximity of the workman to the hatchway; that the accident therefore arose "out of" as well as "in the course of" his employment, and he was entitled to compensation.

And in *Andrew* v. *Failsworth Industrial Society* ([1904], 2 K.B. 32), where a workman had been killed by lightning, the Court held that, as the place where the man worked was an exposed one, likely to be struck by lightning, the accident arose out of and in the course of the employment. And compare this with *Rowland* v. *Wright* (24 T.L.R. 852), where the workman was bitten by a cat which was kept in the stable where he was employed. It was held that this was an accident arising "out of and in the course of his employment." Cozens-Hardy, M.R., points out that the result might have been different if the bite had been caused by a strange cat.

In *Collins* v. *Collins* ([1907], 2 I.R. 104) some pipes were being laid in a street by a contractor, and they had been broken several times by some malicious people. A workman was set to guard them. A fresh attempt was made to break the pipes, and a fight ensued, in which the workman was killed. It was held that this was not an accident arising out of and in the course of his employment.

In *McAllen* v. *Perthshire County Council* (8 F. 783) a roadman was injured in stepping off a steam-roller, the property of his employers. It was no part of his duty to go on the roller, but he had done so to get up steam before the engineer arrived, to oblige the engineer. Held, that the accident did not arise out of and in the course of his employment.

In *Losh* v. *Evans* (51 W.R. 243) the applicant was a

Digitized by Google

"brow girl" at a colliery. It was no part of her duty to start or stop the engine. Nevertheless, she did so and was injured. It was held that the accident did not arise out of and in the course of her employment.

The following cases may also be referred to as explaining the meaning of these words: *Cowler* v. *Moresby Coal Company* (1 T.L.R. 575); *M'Nicholas* v. *Dawson and Son* ([1899], 1 Q.B. 773]; *M'Nicol* v. *Spiers, Gibbs, & Co.* (1 F. 604); *Tod* v. *Caledonian Railway Company* (1 F. 1047); *Callaghan* v. *Maxwell* (2 F. 420); *Logue* v. *Fullerton* (3 F. 1006); *Goodlet* v. *Caledonian Railway Company* (4 F. 986); *McIntyre* v. *Rodger* (6 F. 176); *Morris* v. *Lambeth Borough Council* (22 T.L.R. 22); *Hendry* v. *Caledonian Railway Company* ([1907], S.C. 732).

Workman, employer. See the note on sec. 13 for the meaning of these terms.

Liable to pay. This does not give to the workman a right of action in any court, but if a dispute arises he may institute arbitration proceedings in accordance with the second schedule to this Act (see note on arbitration, pp. 33–36).

Compensation. For scale of compensation, etc., see notes on the first schedule (pp. 191–96).

The compensation is in lieu of wages, and not an addition to them. Therefore, where a workman had received the maximum weekly payments for some weeks and was not dismissed, and afterwards commenced an action for his wages for the period during which he had received compensation and had done no work, the action was dismissed (*Elliott* v. *Liggens* [1902], 2 K.B. 84).

Sec. 1, Subsec. 2 (*a*).

2. Provided that—

(*a*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

Digitized by Google

This proviso differs from the corresponding one in the Workmen's Compensation Act, 1897, inasmuch as the period of disablement is reduced from two weeks to one week. The expediency of this change is very doubtful. If trifling injuries can be made the subjects of compensation, it will in many cases be as expensive to the employer to defend himself as to pay, and this fact will no doubt be present to the minds of those who are disposed to make dishonest claims.

This proviso should be read in conjunction with proviso (*a*) to Sched. I. sec. 1. (see p. 197). The combined result of the two provisos is this:—

(i.) If the injury disables the workman for less than a week, no compensation is payable.

(ii.) If the injury disables the workman for more than one and less than two weeks, compensation is payable only in respect of the part of the second week during which the disablement lasts, and nothing is payable in respect of the first week.

(iii.) If the injury disables the workman for a period of two weeks or more, then compensation is payable in respect of the whole period of disability.

Disable the workman. It is a question of fact in each case whether the workman is so disabled or not. If the workman is earning as much as before the accident, but at some other employment, he is still entitled to an award; and the proper course is to adjourn the arbitration proceedings so that the amount of compensation may be fixed at a later period, should the wage-earning capacity of the workman decrease as a result of the injury.

This was the course taken in *Chandler* v. *Smith* ([1899], 2 Q.B. 506). In that case a workman was employed as foreman in a carpet-weaving factory; his principal duty was to supervise the hands, but he also, to the knowledge of his employer, used to set up and adjust the machines. While adjusting a machine he received an injury necessitating the amputation of his thumb; he continued, however, to attend regularly to his work, only absenting

Digitized by Google

himself from the factory for a sufficient time to enable him to have his hand dressed. He was incapacitated by the accident from setting up and adjusting the machines, and his work was afterwards confined to the supervision of the hands. His employer continued to pay his wages at the same rate after as before the accident; but it was admitted that, should he leave his employer's service, his wage-earning power as a foreman in any other factory would be materially decreased. It was held by the Court of Appeal that as the workman had been prevented by reason of the accident from doing a substantial part of the work at which he had previously earned his wages, he had been "disabled for two weeks from earning full wages at the work at which he was employed"; and therefore his right to an award was not barred by the proviso in the Act of 1897 which corresponds with this one. And it was further held that as the workman had hitherto suffered no pecuniary loss, the proper course was to make a declaration of the liability of the employer, leaving the amount and the duration of the compensation to be fixed upon an application to vary the award, should the workman at any future time be unable by reason of the accident to earn the same wages.

In *Irons* v. *Davis & Timmins, Ltd.* ([1899], 2 Q.B. 330), the same result was obtained in another way. There a lad was earning 9s. a week before the accident and earned the same amount afterwards from the same employers at different work. The county court judge awarded him compensation at the rate of 2s. 6d. a week for life. The Court of Appeal reversed this decision, on the ground that there was no difference between his weekly earnings before and after the accident; but at the suggestion of the Court the employer consented to the amount of the weekly payment being kept alive by payment of one penny a week, so that the workman could apply for a review if necessary.

As *Chandler* v. *Smith* (supra) is the later case, the course there adopted is the one that should be followed. See also the Scotch case of *Freeland* v. *Macfarlane*

Digitized by Google

UNIVERSITY OF CALIFORNIA

(2 F. 832). But in *Clelland* v. *Singer Manufacturing Company* (7 F. 975) it was held that in Scotland the course of making a nominal award cannot be taken if either party objects. And if there has been a complete recovery, there is no need to make any such award (*Husband* v. *Campbell*, 5 F. 1146). And in accordance with this is the decision in *Fraser* v. *Great Northern of Scotland Railway*, (3 F. 908). There the employer offered to take back the workman at the same wages as before the accident. The workman declined. It was held that this did not bar his right to be compensated if his earning capacity was in fact diminished.

All these decisions are based on the fact that after the injury the task is a different one; and it would appear to be the correct interpretation of this Act that, if the task and the earnings be the same within a week after the accident as they were before, the workman is not entitled to any compensation, although there may be evidence that at some later period of his life his wage-earning power will be much reduced as a result of the injury.

Sec. 1, Subsec. 2 (*b*).

(*b*) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of his employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

Digitized by Google

This proviso is identical with the corresponding one in the Workmen's Compensation Act, 1897. Under the present Act, which applies to almost all workmen, it can seldom happen that a workman can have a right of action against his employer for negligence without also having a right to be compensated under this Act. But it may occur in at least two cases—(*a*) when the disability has lasted for less than a week (supra, pp. 68–71); or (*b*) where the workman is unable to proceed under this Act through having failed to comply with the provisions of sec. 2 as to giving notice of the injury and making a claim for compensation (infra, p. 91).

At his option. If the workman brings an action and fails in it, he cannot afterwards institute arbitration proceedings. But he has the right (by sec. 1, subsec. 4) of then and there at the conclusion of the trial of the action asking the Court to assess compensation under this Act. This right must be exercised while the judge who tried the action still has seisin of it, and cannot be made the subject of fresh proceedings. This was decided in *Edwards* v. *Godfrey* ([1899], 2 Q.B. 333). In that case a workman was injured in descending some scaffolding and brought his action under the Employers' Liability Act, 1880. At the trial the jury found contributory negligence and judgment was therefore entered for the defendant. Later the workman instituted arbitration proceedings under the Workmen's Compensation Act, 1897, and an award was made in his favour by the county court judge. On appeal, the Court of Appeal held that the workman had an option as to which remedy he would resort to, and having chosen one course and failed in it, and not having availed himself of sec. 1, subsec. 4, it was too late for him to fall back upon the other remedy. The reasons for this decision appear in the judgment of A. L. Smith, L.J., who said: "I believe the interpretation I have placed upon subsection 4 to be the true one; were it not so, the workman would never make his application for an assessment of compensation while the county court

Digitized by Google

judge had seisin of the action; he would wait until the action was at an end, and would then bring a fresh claim under the Workmen's Compensation Act and would so get compensation without having the costs caused by his bringing the action set off against the amount of his compensation." But in *Rouse* v. *Dixon* ([1904], 2 K.B. 628) it was held that no option had been exercised where a claim for compensation had been withdrawn on the applicant discovering that he was not a dependant and an action had been commenced. And compare *M'Donald* v. *Dunlop* (7 F. 533).

In the recent case of *Cribb* v. *Kynoch, Ltd.*, No. 2 ([1908], 2 K.B. 551), notice of the accident had been given in time. Then after an interval of one year an unsuccessful action was brought. After that the workman instituted proceedings under this Act. It was held that the option had been exercised, and that therefore the proceedings failed.

The converse case must now be considered, viz., If the workman institutes his arbitration proceedings under this Act first and fails, can he afterwards bring an action for negligence? The point is by no means free from doubt, and there has been no decision on it in England. But the Irish Court of Appeal in *Beckley* v. *Scott & Co.* ([1902], 2 I.R. 504) has decided that he can. There was a considerable division of opinion in that case, and with the greatest possible respect, it is submitted that the decision is wrong. In support of the decision it may be urged that the reasoning of A. L. Smith, L.J., as to costs in *Edwards* v. *Godfrey* would not apply in such a case, and further that the section says "nothing in this Act shall affect any civil liability of the employer." On the other hand, the word "option" as here used does not appear to be compatible with first one proceeding being taken and then the other; and the insertion of subsec. 4 in the Act at all seems to show that apart from it the option would be in all cases conclusive. Moreover, it would be a great hardship if an employer

Digitized by Google

could be twice harassed by a person who is never in a position to pay costs. The view here contended for appears to be the view of A. L. Smith, L.J., in *Edwards* v. *Godfrey* ([1899], 2 Q.B. 333) and of Collins, M.R., and Mathew, L.J., in *Neale* v. *Electric and Ordnance Accessories Company, Ltd.* ([1906], 2 K.B. 558), and of the Court of Appeal in *Cribb* v. *Kynoch, Ltd.* (supra); but this point was not directly before the Court in any of those cases.

The next question to consider is, What amounts to an exercise of the option? and there are several cases on this point. In *Isaacson* v. *New Grand (Clapham Junction), Ltd.* ([1903] 1 K.B. 539), a workman was killed by an accident, and his representatives brought an action under Lord Campbell's Act and the Employers' Liability Act, 1880. The county court judge held that there was no evidence of negligence and dismissed the action. The plaintiffs then asked him to assess compensation under the Workmen's Compensation Act, 1897. This also he refused to do, as he did not consider that the place where the accident occurred was a factory within the meaning of that Act. The plaintiff appealed to the Divisional Court against the former decision and to the Court of Appeal against the latter. The Divisional Court ordered a new trial. On the second trial the action was again dismissed on the ground that there was no evidence of negligence. Application was again made for compensation under the Workmen's Compensation Act, 1897, and was adjourned pending a second appeal. The plaintiff again appealed to the Divisional Court, and the defendants then took the point that by asking the judge to assess compensation the plaintiffs had exercised their option. But the Court overruled this contention. Lord Alverstone said: "Whatever may be the real meaning of the second provision, the condition which allows the plaintiff to exercise the option is that the defendant is not liable in the action under the Employers' Liability Act. The plaintiff is then in the position that he must preserve his

Digitized by Google

rights; if he does not appeal he desires to get compensation under sec. 1, subsec. 4; if he appeals, and appeals successfully, the action will not have really been decided at that stage, that is, by the county court judge. The proper view is, in my opinion, that if the plaintiff intends to appeal he may at that stage have to make an application *pro forma* to the county court judge to assess the compensation under the Workmen's Compensation Act, and ask that the application may stand over till the appeal has been heard." However, in *Neale* v. *Electric and Ordnance Accessories Company, Ltd.* ([1906], 2 K.B. 558), it was held that when an award has actually been made and not impeached the plaintiff cannot apply for a new trial.

In *Taylor* v. *Hamstead Colliery Company, Ltd.* ([1904], 1 K.B. 838), a workman had joined a scheme duly certified by the Registrar of Friendly Societies under sec. 3, subsec. 1, of the Workmen's Compensation Act, 1897. He was killed by an accident and his representatives brought an action under the Employers' Liability Act for damages. It was held by the Court of Appeal that joining the scheme was an exercise of the option, and the action was dismissed.

In *Little* v. *Maclellan* (2 F. 387) a workman had received weekly payments for several weeks and then brought an action under the Employers' Liability Act, 1880. It was held that the receipt of the payments amounted to an exercise of his option, and the action was dismissed. But compensation was awarded to him under subsec. 4 of this section.

In *Valenti* v. *Dixon* ([1907] S.C. 695), a foreign workman ignorant of the law had accepted small sums purporting to be his half-earnings under the Workmen's Compensation Act; it was held on the facts that he had not exercised any real option under this section.

In *Stephens* v. *Dudbridge* ([1904] 2 K.B. 225) it was held that if the option be exercised by an infant the ordinary rule of law applies, and the option is only binding on him if it be for his benefit.

Digitized by Google

Sec. 1, Subsec. 2 (c).

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

Serious and wilful misconduct. The word "wilful" has often been the subject of judicial interpretation before the Act of 1897; but as the decisions on that Act will enable us to see the sense in which the words are used here, it is only necessary to refer to one of the earlier cases. In *Lewis* v. *Great Western Railway Company* (3 Q.B.D. 195) it was necessary to decide whether the injury to the plaintiff's goods was due to the "wilful misconduct" of the railway company's servants. In the course of his judgment Bramwell, L.J., said: "The next and only other question is, Was this damage caused by the wilful misconduct of the defendants' servants? Mr. Powell's argument when analysed is to this effect: 'The conduct of which we complain was their conduct, and that conduct was misconduct, and it was not accidental, therefore it was wilful.' So that, in the result, unless a thing is a pure accident it is wilful. If a man were walking along and tripped over some goods which he did not happen to see, it would be said that the tripping was the result of his conduct, which was *mis*conduct—not accidental, but wilful—and that the wilfulness was in not looking out. I do not, however, think that the question can be thus dealt with. There is such a mass of authorities to show what wilful misconduct is, that we should hardly be justified, as a Court of Appeal, in departing from them, even if we thought them to be wrong. 'Wilful misconduct' means misconduct to which the will is a party, something opposed to accident or negligence; the *mis*conduct, not the conduct, must be wilful. It has been said, and I think correctly, that

Digitized by Google

perhaps one condition of 'wilful misconduct' must be that the person guilty of it should know that mischief will result from it. But to my mind there might be other 'wilful misconduct.' I think it would be wilful misconduct if a man did an act not knowing whether mischief would or would not result from it. I do not mean when in a state of ignorance, but after being told, 'Now this may or may not be a right thing to do.' He might say, 'Well, I do not know which is right, and I do not care; I will do this.' I am much inclined to think that that would be 'wilful misconduct,' because he acted under the supposition that it might be mischievous, and with an indifference to his duty to ascertain whether it was mischievous or not. I think that would be 'wilful misconduct.'"

This exhaustive definition is quite sufficient to show the meaning which has been put on this term, without quoting any of the other older cases. We must next consider the decisions on the meaning of the words "serious and wilful misconduct" in the Act of 1897. It should be noticed that several of these cases have already been referred to in the note on subsec. 1, pp. 62–68.

The first deduction from them is that whether the facts in a particular case do or do not amount to "serious and wilful misconduct" is a question of fact to be decided by the arbitrator. This was first laid down in *Rumboll* v. *Nunnery Colliery Company, Ltd.* (80 L.T. 42). In that case a miner was injured by a fall of part of the ceiling in a mine. The evidence of serious and wilful misconduct was that the applicant and other miners had removed some props from one position to another in breach of the rules made under the Coal Mines Regulation Act, 1887. The county court judge held that this did not amount to serious and wilful misconduct and awarded compensation. The Court of Appeal refused to disturb his finding, saying they could only do so if there was no evidence to support it. "Speaking for

Digitized by Google

myself," said A. L. Smith, L.J., "I think that an appeal against the finding that there has not been 'serious and wilful misconduct' on the part of a workman can hardly ever be successful." The Scotch judges have not approved of this principle, although all the English decisions are uniform on this point. Thus in the Scotch case of *Dailly* v. *Watson* (2 F. 1044) a workman was killed in a mine by an accident caused by his using a naked lamp in breach of the regulations. The Sheriff awarded compensation; but the Court of Session reversed his decision, all the judges expressly saying that this was a question of law. But this does not appear to be in accordance with *Glasgow and South Western Railway* v. *Laidlaw* (2 F. 708).

Rees v. *Powell Duffryn Steam Coal Company, Ltd.* (64 J.P. 164), is a case where the county court judge's decision was reversed on the ground that there was no evidence to support it. A collier whose lamp had gone out, and who had gone back to the lamp-station to obtain a light, was obliged, in order to get back to where his work was, to pass along a way along which trams were hauled by a rope. On reaching the way he was told that a "journey" of trams was approaching. Nevertheless he proceeded, and, when making for a manhole, was injured in consequence of the rope slipping. The Court of Appeal held, reversing the county court judge, that there was no evidence of serious and wilful misconduct.

The case of *John* v. *Albion Coal Company, Ltd.* (65 J.P. 788), can be supported on the same grounds, viz., that the Court of Appeal will not look on this question as other than one of fact, and will consequently only reverse a finding if there is no evidence to support it. Otherwise it would be hard to understand the decision. A miner was proceeding along the main haulage road of the mine when he was warned by a fellow-workman to get into a manhole, as a "journey" of trams was approaching. He disregarded the warning and went on, with the result that he was overtaken and killed. It will be noticed that

Digitized by Google

the facts of this case are very similar to *Rees* v. *Powell Duffryn* (supra). But the county court judge found that this was serious and wilful misconduct, and the Court of Appeal refused to disturb his finding.

In *Reeks* v. *Kynochs, Ltd.* (50 W.R. 113), it was decided that an act of disobedience resulting from a sudden impulse is not serious and wilful misconduct. There the applicant was a lad who worked at a machine used to cut slits in the heads of screws. He had been frequently warned not to put his hand near the wheel while it was in motion. A screw fell out on to the table before it was cut, and he leaned over the machine to pick it up and replace it. As a result his hand was injured. The Court considered that he was negligent, but said that, as he appeared to have acted on a sudden impulse, his act did not amount to serious and wilful misconduct.

All the cases on this subject were reviewed by the House of Lords in *Johnson* v. *Marshall, Sons & Co., Ltd.* ([1906] A.C. 409). A workman was found fatally injured in a lift on his employer's premises without a load. Upon the lift was a notice that no one was allowed to use it except in charge of a load. There was no evidence as to the circumstances under which the workman entered the lift. In an application for compensation by the widow, it was held that the burden of proving that the workman was guilty of serious and wilful misconduct lay upon the employers, and that here there was no evidence of it. So it would seem that if the circumstances of a case are wholly unexplained the dependants are entitled to compensation. Lord James of Hereford also points out (at p. 414) that the word "serious" applies to the misconduct and not to the result of it. He says: "A man may be told not to walk on the grass. He does so, slips up, and breaks his leg. The consequences are serious, but the misconduct is not so." And the same principle is apparent in the Scotch decision of *Wallace* v. *Glenboig Fire Clay Company* ([1907], S.C. 967), where it was held that misconduct in order to be serious and wilful must

Digitized by Google

be both a wilful act of misconduct, and also must not be trivial or doubtful as regards quality, but must be serious.

A good example of serious and wilful misconduct is found in *Bist* v. *London and South Western Railway* ([1907], A.C. 209). There an engine-driver, in breach of his orders, left the footplate of the engine and went on the tender while the train was in motion, and in so doing was killed. This was held to be serious and wilful misconduct.

Being drunk and unfit to work is serious and wilful misconduct (*M'Groarty* v. *Brown*, 8 F. 809).

A man who has been injured by an accident may have been guilty of serious and wilful misconduct, but the accident may not be due to such misconduct, and in that case he is not debarred from obtaining compensation by this section. Thus in *Praties* v. *Broxburn Oil Company* ([1907], S.C. 581) a miner had been guilty of serious and wilful misconduct in breaking a rule of the mine, but the accident was not directly attributable to the breach of rule, but to an act done by him after the operation to which the rule applied had been completed. He was awarded compensation. In the same way, in *Glasgow Coal Company* v. *Sneddon* (7 F. 485) a miner had been told not to ride on a particular truck. He did so, and while on the truck was killed by a stone falling from the roof. It was held that, although this was serious and wilful misconduct, the accident was not attributable to it.

The following cases dealing with breaches of regulations by miners turn upon the facts in each case: *O'Hara* v. *Cadzow Coal Company* (5 F. 439); *Lynch* v. *Baird* (6 F. 271); *United Collieries* v. *M'Ghie* (6 F. 808); *Dobson* v. *United Collieries* (8 F. 241); *M'Nicol* v. *Spiers & Co.* (1 F. 604), *George v. Glasgow Coal Company*, the *Times*, Nov. 10, 1908.

The following cases also deal with the meaning of these words: *Callaghan* v. *Maxwell* (37 S.L.R. 313), *Guthrie* v. *Boase Spinning Company, Ltd.* (38 S.L.R. 483),

Digitized by Google

Brooker v. *Warren* (23 T.L.R. 201), *Powell* v. *Lanarkshire Steel Company* (6 F. 1039).

Unless the injury results in death or serious and permanent disablement. If the object of the Workmen's Compensation Acts has been to place the burden of the loss caused by an injury on the shoulders of the man who is best able to prevent the mischief, or even if the object is merely to place upon the industry risks which are incidental to it, that object is lost sight of in this clause. For by no amount of foresight can an employer make sure that his workman will not disobey orders. And in no sense can an injury be said to be due to the nature of the industry, when it is brought about by the workman's reckless disregard of rules made for the safety of himself and his fellow-workmen.

The hardship to employers may to some extent be mitigated by the interpretation which has been put upon the words "arising out of and in the course of the employment" (see note on subsec. 1, pp. 62–68). But there will still be many cases where the accident has been brought about by the workman's own fault or stupidity, and yet the employer has to pay a large sum as compensation.

Where death is the result of the injury, no difficult legal question arises. But the words "serious and permanent disablement" are sure to give rise to difficulties. The two adjectives are conjunctive, and therefore the injury must be both serious *and* permanent for this exception to apply. It is not enough that the injury is of a grave nature, if the man subsequently recovers his health; and on the other hand, although the man may be disabled for life, that will not bring him within this exception if the disablement is of a trifling character.

Moreover it should be noted that a serious and permanent *affliction* is not enough; it must be a serious and permanent *disablement*, *i.e.*, the injury must seriously and permanently lessen the man's wage-earning power. As to what is a disablement, see the note on subsec. 2 (*a*)

Digitized by Google

(supra, p. 69), but notice that in this present clause it is not a disablement from doing the work at which he was formerly employed which is mentioned. Therefore, if the man be seriously and permanently disabled from earning wages in his former trade, he would not be within this exception if he were able to earn equally good wages in another.

It is impossible to lay down a rule as to what amount of disablement is "serious"; it will no doubt be a question for the arbitrator in each case, just as it was in the cases cited on the meaning of "serious and wilful misconduct" (see *Johnson* v. *Marshall* [1906], A.C. 409, supra, p. 79). "Serious" is defined (in this class of context) in both Webster's Dictionary and the Century Dictionary as "giving rise to apprehension; attended with danger."

As to the word "permanent," there are of course many cases where the disablement is obviously permanent, as, *e.g.*, where a limb has been lost. But there must also be many others where at the time of the arbitration it is not possible to say whether or not there is any prospect of the workman recovering his health. In such a case it is submitted that the arbitrator must make up his mind from the medical evidence once and for all; if he decides that the disablement is permanent, and the workman afterwards recovers, that is his good fortune. But in such a case, if a weekly payment had been ordered, an application might, semble, be made to vary the award (see p. 225).

Sec. 1, Subsec. 3.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies) or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be

Digitized by Google

settled by arbitration, in accordance with the Second Schedule to this Act.

The procedure on abritration is dealt with in the notes on the second schedule, and at pp. 33–36.

Any question arises in any proceedings. If a claim is made by a workman, and the full weekly amount claimed is paid up to date, and there is a promise to continue to pay during the incapacity, no "question" has arisen and the county court judge has therefore no jurisdiction to make an award. This was decided in *Field* v. *Longden* ([1902] 1 K.B. 47), where it was held that it was a condition precedent to the jurisdiction of the county court judge that a question should have arisen as to the liability to pay, or as to the amount or duration of the compensation.

In *Powell* v. *Main Colliery Company* ([1900], A.C. 366) the meaning of the word "proceedings" was considered by the House of Lords. This case is more fully mentioned in the note on sec. 2, subsec. 1 (p. 97), on the question of notice. So far as it affects this present subsection the speech of Lord Halsbury shows that "proceedings" is used in this statute in a popular sense. It is not necessary that any legal proceedings should be on foot; in fact, the subsection would be meaningless if that were the case. It is sufficient if the claim for compensation has been made by the workman. This case also shows that the request for arbitration may be made by the employer, as well as by the workman. Were this not so, the workman might make his claim and then sleep on his rights for years. So soon as the claim is made either party may demand an arbitration.

Agreement.—A case arising under the second section of the Workmen's Compensation Act, 1897 (as to notices), explains the meaning of the word "agreement." This is *Rendall* v. *Hill's Dry Dock and Engineering Company, Ltd.* ([1900] 2 Q.B. 245), where a workman had been injured by an accident, and his employers, through an

Digitized by Google

insurance company, paid him weekly one half the amount of his wages, taking a receipt "on account of compensation which may become due to me under the Workmen's Compensation Act." The payments continued to be made for ten months after the accident and then ceased. The workman filed a request for arbitration. It was held by the Court of Appeal that, there being no evidence of any admission on the part of the employers of their liability under the Act to pay compensation, they were not estopped from taking the objection that the request for arbitration was out of time. This case, of course, is a decision not on this subsection but on sec. 2 (*q.v.*, p. 100); but it shows that a mere payment and acceptance of compensation does not amount to an agreement. See also on this point *Wright* v. *Bagnall* ([1900] 2 Q.B. 240), which is discussed in the note on sec. 2 at p. 99.

As to who can enter into such an agreement, it is submitted that the ordinary law applies as to persons not *sui juris*. Thus in the case of an infant such an agreement would only be supported if it were for his benefit (cf. *Stephens* v. *Dudbridge* [1904], 2 K.B. 225 as to exercising the option under subsec. 2 (*b*), supra, p. 75). An agreement by a lunatic would be binding, unless the lunatic could show that the other party knew of his condition (*Imperial Loan Company* v. *Stone* [1892] 1 Q.B. 599). In all such cases where a doubt as to the validity of the agreement might arise, it would be wise for the employer to pay the compensation into court.

The agreement need not be in any particular form. It may be verbal or even implied (*Wright* v. *Bagnall*, supra). But before it can be enforced as a county court judgment, a memorandum of it must be registered in the county court (see note on Sched. II. sec. 9, pp. 247–255).

Sec. 1, Subsec. 4.

(4) If within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of

Digitized by Google

this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the Court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which in its judgment have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceedings under this subsection, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deductions for costs, and such certificate shall have the force and effect of an award under this Act.

This subsection must be read in conjunction with subsec. 2 (*b*) supra, p. 71. The former subsection gives the workman an option in the case where he has two remedies. It is clear that if he brings his action and fails, he cannot afterwards institute arbitration proceedings under this Act (*Edwards* v. *Godfrey* [1899], 2 Q.B. 333, supra). It is also submitted (see p. 73) that the converse is true, namely, that if he institutes arbitration proceedings and fails, he cannot afterwards bring an action (but this point cannot be looked on as settled). This state of the law might in some cases press hardly on the workman, and this present subsection gives him a *locus pœnitentiæ* and enables him, if defeated at the trial of the action, to ask the Court then and there to assess compensation, and the Court will then do so, and give him a certificate which has the effect of an award under this Act.

Digitized by Google

This exceptional privilege is hedged round with certain conditions. First of all, it is subject to this, that it only applies if the action is brought within the time limited in this Act for taking proceedings, and, secondly, the Court may deduct from the compensation all or part of the costs which have been caused by bringing the action instead of proceeding under this Act.

The application to assess compensation must be made then and there, while the judge still has seisin of the action. The workman cannot start arbitration proceedings after failing in an action (*Edwards* v. *Godfrey* [1899], 2 Q.B. 333). If the workman could get compensation by starting separate proceedings, he would always do so; for by Sched. I. sec. 19 no claim can be set off against a sum payable as compensation; and therefore there would be no means by which the employer could recover the costs of the action, although he would have to pay the full amount of compensation. Thus it has been held in two Scotch cases (*M'Gowan* v. *Smith* [1907], S.C. 548, and *Baird* v. *Higginbotham*, 3 F. 673) that the application to have compensation assessed under this subsection must be made timeously. In the former case the workman was injured in May, 1906, and his action for damages was dismissed on February 5, 1907, and on February 19th he asked the Court to assess compensation. In the latter the accident took place on January 2, 1900, an appeal in the action was dismissed on November 29, 1900, and an application for compensation was made on February 14, 1901. In both cases the Court refused to award compensation.

An apparent exception occurs where the workman has been defeated in the action and desires to appeal. This question was considered in *Isaacson* v. *New Grand (Clapham Junction)* ([1903], 1 K.B. 539), the facts of which are given at p. 74. It was there pointed out that it would be a hardship if the application for compensation should be taken as an exercise of the option under sec. 1, subsec. 2 (*b*), thus preventing the plaintiff from appealing, and

Digitized by Google

therefore his right to ask the Court to assess compensation lasts till the matter is finally disposed of. It is not clear from the Act itself which Court would then assess the compensation, the Court of Appeal or the Court of first instance. But it is pointed out in *Isaacson* v. *New Grand (Clapham Junction)*, supra, that the correct course is for the workman to make his application at the conclusion of the trial, and the matter can then be adjourned pending the appeal (see also *Neale* v. *Electric and Ordnance Accessories Company, Ltd.* [1906], 2 K.B. 558; *Cribb* v. *Kynochs, Ltd.* [1908], 2 K.B. 551, ante, p. 73).

Within the time, etc. The claim for compensation has to be made within six months of the accident, or in the case of death, within six months of the death. If the action is brought at a later period than this, it will be too late for the workman to take proceedings under this Act, and so his right under this subsection is gone (see note on p. 72.)

Court. This is the only case under the Act where the compensation is assessable by any one except an arbitrator. Under this subsection the "Court" might be a judge of the High Court, or a judge and jury. In the latter case it is submitted that it would be the judge only who assessed the compensation; but the point has not yet arisen. Part of the duty of the "Court" is to deal with the costs and to give a certificate, and it cannot be within the province of a jury to deal with either of these matters.

May deduct . . . costs. I.e., not all the costs of the action, but only the amount by which the employer's costs have been increased through the action being brought instead of arbitration proceedings being taken. This might only be a small amount, usually merely the cost of rebutting the allegation of negligence. But if the employer has all along admitted his liability to pay compensation, it is submitted all the costs of the action ought to be given him.

It is also submitted that "may deduct" means

Digitized by Google

ought to deduct unless there is some good reason to the contrary. But it has been held in *Cattermole* v. *Atlantic Transport Company* ([1902], 1 K.B. 204) that the county court judge has a discretion to deal with all the costs arising in such proceedings, and may even in exceptional cases give the unsuccessful plaintiff all the costs of the action. In that case an action was brought by the workman's representative under Lord Campbell's Act and the Employers' Liability Act and was dismissed, but the county court judge made an award for £234, and an order was made that the defendants should pay to the plaintiff all her costs of the proceedings. On appeal this order was affirmed. Stirling, L.J., said: "In general this would not be right, but such an order may be justified by special circumstances, as if, for example, the judge was satisfied that no costs had been caused by the plaintiff bringing an action instead of proceeding under this Act. This matter is one within the discretion of the judge."

The certificate shall have the force, etc. The certificate must be in the form given in Appendix B (Form 44).

An arbitrator, as such, has no power to enforce an award. The right course is to apply to the county court judge. An award properly registered under Sched. II. sec. 8 is enforceable as a county court judgment, and a committal order can be made under the Debtors' Act, 1869 (*Bailey* v. *Plant* [1901], 1 K.B. 31). As to other methods of enforcing awards, see pp. 316–317).

Sec. 1, Subsec. 5.

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

This subsection differs materially from the corresponding one in the Act of 1897; for that Act says: "But if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall

Digitized by Google

be taken into account in estimating the compensation under this Act." As this part of the clause is omitted in this Act, presumably it is intended that any benefit to the workman under these statutes shall be in addition to his compensation.

Fines are payable under three different statutes.

(1) The Metalliferous Mines Regulation Act, 1872, 35 and 36 Vic. c. 77, sec. 38: "Where a penalty is imposed under this Act for neglecting to send a notice of any explosion or accident, or for any offence against this Act which has occasioned loss of life or personal injury, the Secretary of State may (if he think fit) direct such penalty to be paid to or distributed among the persons injured, and the relatives of any persons whose death may have been occasioned by such explosion, accident, or offence, or among some of them:

"Provided that—

"(i) Such persons did not, in his opinion, occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to committing the offence;

"(ii) The fact of such payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on such explosion, accident, or offence."

(2) The Coal Mines Regulation Act, 1887, 50 and 51 Vic. c. 58, sec. 70. This section is in exactly the same words as the section of the Act of 1872 set out above, applying the same principle as is there enacted to the coal-mining industry.

(3) The Factory and Workshop Act, 1901, 1 Edw. VII. c. 22, sec. 136: "If any person is killed or dies or suffers any bodily injury or injury to health, in consequence of the occupier of a factory or workshop having neglected to observe any provision of this Act or any regulation made in pursuance of this Act, the occupier of the factory or workshop shall be liable to a fine not exceeding one hundred pounds and, in the case of a second or subse-

Digitized by Google

quent conviction in relation to a factory within two years from the last conviction for the same offence, not less than one pound for each offence; and the whole or any part of the fine may be applied to the benefit of the injured person or his family or otherwise as the Secretary of State determines: Provided as follows:—

"(i) In the case of injury to health the occupier shall not be liable under this section, unless the injury was caused directly by the neglect.

"(ii) The occupier shall not be liable to fine under this section if any information against him for not observing the provision or regulation to the breach of which the death or injury was attributable has been heard and dismissed previous to the time when the death or injury was inflicted."

Digitized by Google

SECTION II

1. Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or in case of death, within six months from the time of death. Sec. 2.

Provided always that—

(*a*) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

Digitized by Google

(*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

2. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

3. The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

4. Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

The scheme of this section is the same as that of the corresponding one of the Act of 1897, but the wording is slightly different, and proviso (*b*) and part of proviso (*a*) are new. The tendency of these changes is to lessen the importance of accuracy in the steps to be taken; and even under the old Act it was very seldom that a workman failed to get compensation through such an inaccuracy.

Digitized by Google

Notice of the Accident

The notice—

(1) should give the name and address of the injured person;

(2) should state in ordinary language the cause of the injury, and the date on which the accident happened;

(3) should be served on the employer;

(4) must be in writing.

The first three of these requirements are expressly enacted; the fourth may be gathered from the general tenour of the section, and from the construction which has been put upon the similar words in sec. 7 of the Employers' Liability Act, 1880 (see *Moyle* v. *Jenkins*, infra).

Most of the reported cases on notices are decisions on the Employers' Liability Act, 1880, but they apply equally well to this section. The first of these cases is *Moyle* v. *Jenkins* (8 Q.B.D. 116). There the defendant had admittedly received verbal notice of the claim, but no formal written notice was given. It was held that this omission was fatal to the plaintiff's case. Lopes, J., said, "The terms of sec. 7 can refer to nothing but a notice in writing. There are express provisions as to what the notice is to contain and how it is to be served. I think a verbal notice is insufficient."

In *Keen* v. *Milwall Dock Company* (8 Q.B.D. 482) verbal notice had been given, and later a letter was written in the following terms: "I am instructed by George Keen, of 136, Rhodeswell Road, Limehouse, to apply to you for compensation for injuries received at your dock, particulars of which have already been communicated to your superintendent. I shall be glad to hear from you on the subject." It was held that this did not constitute a sufficient notice.

In *Stone* v. *Hyde* (9 Q.B.D. 76) the notice contained all the necessary particulars except the cause of the injury, and it was held that this was not such a defect as to make the notice invalid, having regard to the proviso

Digitized by Google

at the end of sec. 7. In these two cases the facts are nearly identical, and the decisions cannot be reconciled. It is submitted that *Stone* v. *Hyde* is more in accordance with the later decisions, and is the one which would now be followed.

In *Hearn* v. *Phillips* (1 T.L.R. 475) the notice was addressed to the wrong man, owing to a mistake in the initials; but it was delivered at the defendant's house and was brought to his notice. The county court judge allowed the notice to be amended by altering the initials, and this amendment was upheld by the Divisional Court.

In *Previsi* v. *Gatti* (4 T.L.R. 487) the notice merely stated that the plaintiff had sustained injury at the defendant's place of business on the 8th of August. The accident had, in fact, happened on the 9th of August. The notice therefore gave the wrong date, and omitted the cause of injury and the plaintiff's address. The county court judge held that these mistakes and omissions were not of such a nature as to prejudice the defendant in his defence, and his ruling was upheld by the Divisional Court.

The following cases are also in point: *Carter* v. *Drysdale* (12 Q.B.D. 91) and *Clarkson* v. *Musgrave* (9 Q.B.D. 386).

From these decisions it appears that the Court has been slow to uphold objections to the form of the notice, and the tendency has been to look on nearly all defects as being curable by amendment.

Subsec. 3 may at first sight appear superfluous, for there can be no doubt that a letter posted in the ordinary way (not registered) and duly delivered would constitute a sufficient service of the notice in view of the provisions in proviso (*a*). But the object of the subsection is probably to bring this service within sec. 26 of the Interpretation Act, 1889, 52 and 53 Vic. c. 63: "Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or the expression 'give' or 'send'

Digitized by Google

or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post." This subsection adds the requirement that the letter be registered. If that is done service will be presumed to have been properly effected in the absence of proof to the contrary.

The expression *as soon as practicable* occurs also in the Act of 1897, and is a somewhat unusual one. Its meaning cannot be quite the same as "within a reasonable time." "As soon as practicable" means, it is submitted, "at the earliest possible moment," and allows of less delay than such a phrase as "within a reasonable time." It would always be wise for the workman to give his notice as soon as he possibly can. The effect of these words is of course largely done away with by the proviso (*a*); if they stood alone they would make it essential that the notice should be given without any delay.

The Act does not say who is the proper person to give the notice. Apparently any one may do it, even some one not professing to act on behalf of the workman.

Proviso (*a*).—The new words in this proviso, "or would not, if a notice or an amended notice were then given and the hearing postponed," are so wide as to cover almost every case, and it is submitted that it can now hardly ever happen that the want of a notice would be fatal to a workman's claim.

There is, however, one case in which the want of or a defect in a notice might prejudice an employer in a way which could not be got over by an amended notice or an adjournment. Suppose a case where the defence is that the accident was due to the workman's "serious and wilful misconduct." Then if notice is given "as soon as practicable" after the accident, the employer has an opportunity of making inquiries and getting evidence for

Digitized by Google

his defence. But if a long time elapses before the matter is brought to his notice, it might be impossible for him to get up his case, for the witnesses might be dead or lost sight of. In such a case he would be prejudiced by the want of notice, and therefore could rely on this section for his defence, unless the want, defect, or inaccuracy was due to "mistake, absence from the United Kingdom, or other reasonable cause." It should be added that under the Act of 1897 it has been held that the fact that the employer has not been prejudiced in his defence by the absence of a notice cannot be presumed. The onus of proving the absence of prejudice is on the workman (*Shearer* v. *Miller and Son*, 37 S.L.R. 80).

The words "absence from the United Kingdom" occur both in proviso (*a*) and proviso (*b*). With regard to proviso (*a*) it is not easy to see why these words have been inserted. It is a simple matter to send a notice through the post, and a notice posted in a foreign country soon after the injury, and delivered in England some days or even weeks afterwards, would surely have been given "as soon as practicable," so as to satisfy the main part of the section.

Further, how can want of a notice be "occasioned" by absence from the United Kingdom? If the workman is abroad and forgets to send the notice, or is ignorant of the need of it, it is just as much, or as little, a "mistake" as if he did the same thing in England; the delay is due to the "mistake" and not to the "absence," and as such is protected by the previous word in the proviso. On the other hand, if the workman does not send the notice because of stress of circumstances—as, *e.g.*, if a workman is hurt in some remote spot and is unable to post a letter—he would surely be protected by the main part of the section; for if he sent the notice as soon as he could get in touch with a post office, that would be "as soon as practicable." It is therefore submitted that these words are superfluous. These remarks do not apply to the same words in proviso (*b*) (see p. 101).

Digitized by Google

As to what is "mistake or other reasonable cause" see *Rankine* v. *Alloa Coal Company* (6 F. 375), where a workman delayed giving notice because at first it did not appear that the injury was likely to be sufficiently serious to make it worth while to claim compensation. Later on he became worse, and started compensation proceedings, and it was held that the want of a notice was due to a mistake for which there was reasonable cause.

And to the same effect is the decision in *Brown* v. *Lochgelly Iron and Coal Company* ([1907], S.C. 198).

The Claim for Compensation.

The claim must be made within six months from the occurrence of the accident, or if the workman dies from his injuries, within six months of the death. Unlike the notice, the claim need not be in writing (*Lowe* v. *Myers* [1906], 2 K.B. 265), and need not be in any special form nor give any particular information. All that is required is that a demand for compensation should be made. There are a number of cases where the Court has had to decide whether a proper claim has been made. The first of these is *Powell* v. *Main Colliery Company* ([1900], A.C. 366); this case has already been cited at p. 83. It was there urged on behalf of the employer that the "claim for compensation" meant the first step in judicial proceedings, and that, as no such step had been taken within six months of the accident, the applicant must fail. The House of Lords overruled this contention, and decided that what the words meant was a demand to be compensated, made in any terms. Lord Halsbury is at pains to point out that one of the objects of the Workmen's Compensation Act, 1897, was to set up a form of proceedings which should be quite informal. In order to add any formal requirements to the "claim" it would be necessary to add words to the statute, which he was not prepared to do.

The Scotch case of *Bennett* v. *Wordie* (1 F. 855) is not really inconsistent with this decision. There the

Digitized by Google

representative of the deceased workman had written as follows: "I am instructed by his father to intimate that he holds you liable for compensation and solatium. This notice is given in terms of the statutes." It was held that this was merely an intimation of an intention to claim compensation and was not sufficient. Although this decision is not inconsistent with *Powell* v. *Main Colliery Company*, it is very doubtful whether it would have been followed in England. Under the present Act the point would not be of importance, for such a case as this would no doubt be protected by proviso (*b*). But it has recently been held in Scotland that a claim under the Workmen's Compensation Act, 1897, must be a claim for a specific sum, not merely an intimation of a demand for compensation (*Kilpatrick* v. *Wemyss Coal Company* [1907], S.C. 320). See also *Maver* v. *Park* (8 F. 250). The Irish case of *Marno* v. *Workman, Clark & Co.* (33 I.L.T. 183, and see [1900], 2 Q.B. 149, note), which was quoted in *Powell* v. *Main Colliery Company* as an authority in favour of the employer, is also not inconsistent with that decision; for there the judgment rested on the fact that no claim at all had been made.

In *Perry* v. *Clements* (17 T.L.R. 525) a workman had sustained an injury and thereupon served a notice of the accident upon his employer. Later he brought an action for negligence and got a verdict. It was argued for the defendant that the notice which had been given amounted to a claim for compensation, and that thereby the workman had exercised his option under sec. 1, subsec. 2 (*b*), and could not now bring his action. Ridley, J., held that such a notice did not amount to a claim for compensation and entered judgment for the plaintiff.

Lowe v. *Myers* ([1906] 2 K.B. 265), is the latest case, and it shows how slow the Court is to give effect to mere technical objections in arbitrations under these Acts. The respondents to an application for compensation under the Workmen's Compensation Act, 1897, stated

Digitized by Google

by their answer as a fact which they desired to bring to the notice of the arbitrator that within a few weeks of the accident they had paid to the applicant a certain sum which he had accepted in satisfaction of all claims, and they denied any further liability under the Act. The answer also raised the defence that no claim for compensation had been made within six months of the accident. The county court judge dismissed the application on the ground that there was no evidence of a claim having been made within the statutory six months. But the Court of Appeal held that the statement in the answer as to the payment of compensation was an admission of fact on which the applicant was entitled to rely and afforded some evidence of a claim having been made, and that the application ought to be remitted to the county court judge for a rehearing. Collins, M.R., quotes with approval that part of Lord Halsbury's speech in *Powell* v. *Main Colliery Company* (supra, p. 97) in which the Lord Chancellor pointed out that it was part of the intention of the Act that proceedings under it should be of an informal nature. In this case there was no evidence of any sort of the form which the supposed claim had taken; and this judgment therefore involves the proposition that, so long as a demand to be compensated is made, it does not matter what form it takes, nor does it matter whether the claim be verbal or in writing; and it would appear that in this respect the law in England and Scotland is not the same (see *Kilpatrick* v. *Wemyss Coal Company*, supra).

A workman may sometimes succeed although he has made no claim; for the conduct of the employer may have been such that he is estopped from setting up this defence. This was considered in the two cases of *Wright* v. *Bagnall* ([1900] 2 Q.B. 240) and *Rendall* v. *Hill's Dry Dock and Engineering Company, Ltd.* ([1900] 2 Q.B. 245). In *Wright* v. *Bagnall* weekly payments were made to the workman; but there was an argument

Digitized by Google

as to the amount at which the weekly amounts should be commuted, and the respondent's manager or foreman said that if the workman stood out for the sum he was claiming, they would have to go to the Court. Both parties thereupon forebore to take steps to have the amount assessed, and during the period in which they were negotiating the six months expired. The defendants took the point that no claim had been made within six months, and the county court judge dismissed the application. But the Court of Appeal held that under these circumstances the employers were estopped from relying on this defence, as they had by their conduct admitted their liability to pay compensation, and the only thing outstanding was the question of amount. The other case, *Rendall* v. *Hill's Dry Dock and Engineering Company, Ltd.* ([1900] 2 Q.B. 245), is just the other side of the line. A workman had been injured, and his employer's insurers paid him weekly one half his weekly wages, taking a receipt which expressed that the money was received "on account of compensation which may be or become due to me under the Workmen's Compensation Act, 1897." These payments were continued for ten months after the accident and then ceased. The workman started proceedings, and it was held that, there being no evidence of any admission on the part of the employers of their liability under the Act to pay compensation, they were not estopped from taking the objection that the request for arbitration was out of time. And to the same effect is the decision in the Scotch case of *O'Neill* v. *Motherwell* ([1907], S.C. 1076). There compensation had been paid for six months after the accident without anything being said about the Act. Then the workman demanded arbitration. It was held that the employers were not estopped from relying on the absence of a claim.

Proviso (*b*). This is new law, and puts a workman who has failed to make a claim on something like the same footing as one who has failed to give a notice;

Digitized by Google

but the only cases where a failure to make a claim is excused are where it is due to "mistake, absence from the United Kingdom, or other reasonable cause."

The employer who does not receive "notice of an accident" "as soon as practicable" is not likely in the great majority of cases to be seriously prejudiced in his defence thereby; but if he does not have a "claim for compensation" made upon him within six months, his position is much more serious; for years may have elapsed and it might be impossible for him to prepare his defence. It is probably for this reason that the words "that the employer is not . . . defect or inaccuracy" which occur in proviso (*a*) have not been put in proviso (*b*). This proviso will be very useful to the workman in such a case as the one last cited (*Rendall* v. *Hill's Dry Dock Company*, supra), where the workman's failure to make a claim, if not due to "mistake," was certainly due to "a reasonable cause," namely, a belief that the employers admitted their liability to pay.

The words "absence from the United Kingdom" do here, unlike in proviso (*a*) (supra, p. 96), meet a case that would otherwise be unprovided for. For a claim must be made within a definite time, six months, and not "as soon as practicable." Therefore if a man is hurt in some remote spot, it might possibly happen that he would be unable to communicate with his employers for six months, and were it not for these words, his claim might be defeated by the main part of the section.

The use of these words "absence from the United Kingdom" in the two provisos leads one to a conclusion which is nowhere directly laid down in the Act—namely, that a workman is entitled to the benefits of this Act who is hurt in some place abroad where he is working in pursuance of a contract made in England. It could hardly be contended that the words were only inserted in the Act to meet the case of a workman injured in England and then instantly leaving the country before he had time to give notice of the accident. It is therefore submitted

Digitized by Google

that the Act covers the case of a workman who is, *e.g.*, engaged in England to work on a railway in South America, and sustains an injury out there.

Notice that this proviso, unlike (*a*), does not contain the clause about the employer being prejudiced; the only cases to which this proviso applies are where the failure was due to "mistake, absence from the United Kingdom, or other reasonable cause." But even this is wide enough to cover almost every instance, except where the workman has acted in bad faith in not making the claim, as, *e.g.*, where he purposely delays in order to make it more difficult for the employer to defend himself.

Proceedings. The meaning of this word has given rise to some difference of opinion. The question was discussed by the House of Lords in *Powell v. Main Colliery Company, Ltd.* ([1900] A.C. 366). From that case it appears that the service of the notice and the making of the claim (save in the excepted cases of the provisos) are conditions precedent to the institution of proceedings. But once these conditions have been fulfilled, the next step may be taken by either party, the workman or the employer. Were this not so, it would be a hardship on the employer; for the workman might make his claim and then sleep on it for years; for there is no limit of time for any step in the proceedings after the claim. There is no express provision in this Act or the Act of 1897 which empowers the employer to institute proceedings. But Lord Halsbury in his speech in that case said that this is the proper interpretation.

The person to take proceedings. It is somewhat curious that neither this Act nor the Workmen's Compensation Act, 1897, anywhere designates who is the person to take proceedings. If the workman is alive, of course there is no difficulty. But if he is dead it is not so clear. The Rule Committee consider that the legal personal representative, if there be one, is the proper person to apply for an arbitration (see Rule 4). If there is no personal representative, the dependants themselves may apply. If some

Digitized by Google

of them wish for an arbitration and others do not, the former may apply, and the latter should be joined as respondents.

In the ordinary case it is not of very great importance whether the representative or the dependants have the conduct of the proceedings, but it might happen that their interests were adverse, and then the point would have to be decided.

For instance, in a case where the personal representative is not a dependant, he might desire to bring an action under Lord Campbell's Act, while the dependants wished to proceed under this Act. It will be remembered (p. 71), that by sec. 1, subsec. 2 (*b*), both courses cannot be taken. The workman has an option, and having chosen, his choice is binding on him. Suppose, then, that the dependants take proceedings under this Act and recover compensation; if the personal representative, who, *ex hypothesi*, received none of the compensation, brings an action under Lord Campbell's Act, he is met by the defence that the option has already been exercised.

The definition clause of this Act (sec. 13) does not help to elucidate this point, for it says, "Any reference to a workman who has been injured shall where the workman is dead include a reference to his legal personal representative or to his dependants to whom or for whose benefit compensation is payable." Under the Act of 1897, it was arguable that the legal personal representative was the person to exercise the option, because by Sched. I. sec. 4 he was the person to whom the compensation had to be paid. But it is noteworthy that under this Act the compensation in case of death must be paid into court. The matter is therefore left quite open, and it is impossible to say how the Court would deal with such a case until it has arisen.

Digitized by Google

SECTION III

Sec. 3.

1. If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that where the scheme provides for contribution by the workmen the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workman would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract

Digitized by Google

to the contrary made after the commencement of this Act.

2. The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

3. No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring or which does not contain provisions enabling a workman to withdraw from the scheme.

4. If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsec. 1 of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exist for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

5. When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the

Digitized by Google

Registrar of Friendly Societies in the event of a difference of opinion.

6. Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

7. The Chief Registrar of Friendly Societies shall include in his annual Report the particulars of the proceedings of the Registrar under this Act.

8. The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

This Act does not encourage "contracting out"; a "scheme" which complies with the requirements of this section is the only form of contract made after the commencement of the Act which relieves the employer of his liability (but see sec. 15).

Subsecs. 1 *and* 3.—Before such a scheme can be put into operation, the Registrar of Friendly Societies must "certify" it, and he will not do this unless the scheme satisfies his requirements in the following respects:—

(i) The scheme must provide scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act.

(ii) If the scheme provides for contribution by the workmen, the scheme must confer benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act.

(iii) The majority of the workmen to whom the scheme is applicable must be in favour of the scheme. The opinion of the workmen is to be ascertained by ballot.

Digitized by Google

(iv) The scheme must not contain an obligation on the workmen to join the scheme as a condition of their hiring.

(v) The scheme must contain provisions enabling the workmen to withdraw from it.

If these five requirements are complied with, the scheme can be certified, and then the employer may contract with any individual workman that that workman shall come in under the scheme, and give up his right to be compensated under the Act. But no workman can be compelled to make such a contract.

Subsec. 2.—The Registrar's certificate may remain in force for any time not less than five years. When the certificate expires, it may be renewed, with or without modifications. Under the Act of 1897 there was no provision for renewing the certificate. When it expired, it was gone altogether, and a new certificate had to be obtained. This was the *ratio decidendi* in *Wilson* v. *Ocean Coal Company* and *Treherne* v. *Ocean Coal Company*, which are reported together at 21 T.L.R. 621. In *Wilson* v. *Ocean Coal Company* a workman sued his employer for a sum of money which had been deducted from his wages. The defence was that the deduction had been made in accordance with a scheme which was binding on the workman. It appeared that a scheme of compensation was certified by the Registrar in November, 1898, under sec. 3 of the Workmen's Compensation Act, 1897, as applicable to the defendant's workmen, and the plaintiff was one of the workmen who agreed to come in under the scheme. The scheme expired at the end of 1903, and in December, 1903, a renewal scheme was certified by the Registrar, and the defendant posted up a notice that workmen might enrol under the scheme. The course adopted at the defendant's works was that a month's notice had to be given if a workman wished to withdraw from the scheme. The plaintiff had not given notice of withdrawal, but he did not enrol under the renewal scheme. The defendants deducted a certain sum

Digitized by Google

from his wages as his contribution under the renewal scheme, upon the ground that the workman was bound by it until he gave notice of withdrawal. It was held by the Court of Appeal that, as the original scheme had expired, the workman was not bound by the renewal scheme unless the defendants proved that he had agreed to accept it. In *Treherne* v. *Ocean Coal Company* (supra) the appellant claimed compensation for an injury, and the defence was the same as in the other case; the appeal was allowed for the same reasons.

It seems probable that the additional words in subsec. 2 (from "and may from time" to "it is renewed") are intended to meet such a case as this; and that therefore a scheme which is renewed would be binding on a workman, who had been bound by the original scheme, until he gave notice that he wished to withdraw from it. See *Wallace* v. *Hawthorne* ([1908], S.C. 713, post, p. 189).

Subsec. 4 enables the Registrar to revoke his certificate if a complaint is made to him by or on behalf of the workmen to the effect that either—

(i) the benefits of the scheme no longer conform with the requirements of subsec. 1; or
(ii) the provisions of the scheme are being violated; or
(iii) the scheme is being unfairly administered; or
(iv) satisfactory reasons exist for revoking the certificate.

The meaning of "by or on behalf of the workmen" is not clear. Some indefinite number of workmen appear to be necessary. If the whole body of workmen was meant, the word "all" would probably have been used. The Registrar would no doubt have to use his discretion, as to whether the complaints came from a substantial body of workmen, before he instituted an inquiry. It would appear as if "workmen" in this subsection means only workmen who are bound by the scheme.

Subsec. 5 deals with the method of dividing up the money or securities held for the purposes of the scheme,

Digitized by Google

when the certificate expires or is revoked. First of all, provision must be made for discharging liabilities, and then the surplus is to be distributed as may be arranged by the employer and workmen. If these cannot agree, then the Registrar is to arrange the distribution.

Subsecs. 6 *and* 7 are for the purpose of enabling statistical returns to be made by the Registrar.

Subsec. 8 enables the Registrar to make regulations for carrying out this section. These regulations are set out in Appendix D.

Comparison with sec. 3 *of the Workmen's Compensation Act*, 1897.—It is well to compare this section with the corresponding one in the Act of 1897. It will be noticed that there are numerous changes. In the earlier Act the first "requirement" to obtain a certificate was that the scheme should be "on the whole not less favourable to the general body of workmen" than the benefits of the Act. In this Act this requirement is changed to "provides scales of compensation not less favourable to the workmen." So that it is no longer the general body of the workmen that is considered, but each individual must now benefit by being amenable to a scale of compensation as beneficial as that of the Act. The Act of 1897 was open to the interpretation that a scheme could be certified under which certain of the workmen, who joined it, might not fare so well as under the Act; although it is submitted that this is not the correct interpretation. Under this Act such a construction is no longer possible.

The second requirement in this Act, namely, that workmen should receive benefits in return for their subscriptions, as well as the right to be compensated, is a new provision, and is inserted in order to prevent this section being used as a means of making the workmen pay their own compensation.

The provision for finding out the opinion of the workmen by ballot is also new.

The Working of this Section.—No doubt where a

Digitized by Google

scheme exists it may be well known in a neighbourhood that workmen willing to be bound by the scheme are most likely to find favour with their employers; but apart from such indirect pressure, it will be seen that the most ample safeguards exist to prevent an employer using his influence to compel his workmen to participate in a scheme. For even when a scheme complies with all the conditions and is duly certified, no workman can be compelled to join it nor prevented from withdrawing from it when he so wishes. But, indeed, under this Act the scheme can be of very little, if any, benefit to the employer; for, as it must provide scales of compensation at least as favourable as those in the Act, it would in the aggregate probably involve him in greater expense than if he simply insured against his liability under the Act.

There is no provision compelling the employer to guarantee or insure the solvency of the scheme, and it might well be that the claims arising out of some great disaster in, *e.g.*, a coal-mine, might be greater than the available funds.

It should be noticed that the workmen of two or more employers may be linked together for the purposes of a scheme. This provision might be convenient in some cases, but it is believed that it has never been acted on.

The question has arisen as to whether, when a workman agrees to be bound by a scheme, he thereby exercises the option mentioned in sec. 1, subsec. 2 (*b*), and debars himself from bringing an action for negligence against his employer. This point was discussed in *Taylor* v. *Hamstead Collieries Company* ([1904] 1 K.B. 838). In that case a workman who had joined a scheme duly certified by the Registrar received fatal injuries, alleged to have been caused by the personal negligence of his employers, or of some person for whose act or default his employers were responsible. After the workman's death his representatives brought an action to recover damages. It was held by the Court of Appeal that the contract by the workman that the provisions of the scheme should be

Digitized by Google

substituted for the provisions of the Act was an exercise of the option given to him by sec. 1, subsec. 2 (*b*), and was a bar to the claim of his representatives to recover damages under the Employers' Liability Act, 1880. Collins, M.R., said: "When a scheme is adopted, the provisions of the scheme are substituted for the provisions of the Act; but they take effect under the Act by that substitution; and when he (the workman) seeks to enforce them, he does so under the Act."

Digitized by Google

SECTION IV

Sec. 4, Subsec. 1.

1. WHERE any person (in this section referred to as the principal) in the course of and for the purposes of his trade or business contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of

Digitized by Google

such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

This section is intended to carry out the same principles as sec. 4 of the Workmen's Compensation Act, 1897, but the language is quite different and the same objects are attained by a different means. These principles are, it is submitted, twofold—firstly, to place the burden on the shoulders of the man most likely to be solvent—so that the workman's remedy may not be an illusive one; and secondly, to ensure that the liability to pay compensation shall only fall on a man who has to some extent the power to guard against accidents. These principles are illustrated in the proviso concerning agricultural work. The farmer is usually a much "smaller" man than the contractor who owns the machines, and is not in a position to exercise any control over the contractor's work. In the same way subsec. 4 of this section shows that the Legislature has felt it to be unjust that a man should have this liability put on him if the work is not done on his premises or is in no way under his control or management.

Principal. The objectionable word "undertaker," which has led to so much difference of judicial opinion (cf. *Cooper and Crane* v. *Wright* [1902] A.C. 302) disappears altogether. In accordance with the scheme of the whole Act, the section is quite general in its application. Any "principal" who has work, which he has undertaken in the course of his trade or business, done for him by a contractor or sub-contractor is liable to be called on to pay compensation under this section.

There is one point with regard to the meaning of the word "principal" which is not quite clear, namely whether a man who has work done for himself by a contractor is a "principal" if he is not under contractual liability to any other person to get the work done. This is best illustrated by an example. Suppose a man who

Digitized by Google

for the purposes of his trade or business wishes to alter his premises—for instance, a railway company who propose to build a new station. If that company give out the work to be done by a contractor, does it become a "principal" within the meaning of this section? It is submitted, although the wording of the section is by no means clear, that it does. The words are: "Where . . . the principal . . . contracts with . . . the contractor for the execution . . . of any work undertaken by the principal." In the case put, therefore, it is not enough that the company contract with the contractor to do the work; it must be work which the company have themselves "undertaken" to do. On the one hand, therefore, it would appear that "undertaken" must mean "become liable to some third party"; the word implies that the principal is under an obligation to do the work or get it done; and it would not naturally include work which the principal proposes to do for himself and which no one can force him to do, as in the case put of a company wishing to build a new station. And this view has been adopted by the Scotch Court in the recent case of *Zugg* v. *Cunningham* ([1908], S.C. 827). There the respondents were manufacturers of chemical manure, and had employed a contractor to tar some tanks. One of the contractor's workmen was injured. It was held that the manufacturers were not liable to pay compensation, as the tarring of the tanks was not work which they had undertaken. And this view is supported by the definition given in the Century Dictionary; "to undertake" means "to take on one's self," often "to take formally or expressly on one's self, lay one's self under obligations or stipulations to perform or execute, pledge one's self to." One would incline to think therefore that the "principal" who is moving spontaneously to do certain work would not be within the section, and that it would only include one who was under obligations to some one else to do it.

But, on the other hand, it is submitted that if the view

Digitized by Google

given above be correct there seems to be little reason for inserting the words "in the course of and for the purposes of his trade or business"; for it is extremely difficult to see how a man who has undertaken to get work done can contract with some one else to do it for him except for the purposes of his trade or business. In the same way, the proviso about agricultural work would be entirely superfluous, for in the ordinary case the farmer who employs a contractor to reap his fields would not have "undertaken" with anybody to get the work done—he would be acting spontaneously. It is therefore submitted, with the greatest respect, that the word "undertaken" must be construed as meaning no more than "entered upon," and that the Scotch decision should not be followed; otherwise the bulk of the section would be unintelligible. In the case put therefore of the building of a railway station—which has actually been before the Courts in *Pearce* v. *London and South Western Railway Company* ([1900], 2 Q.B. 100), and was then, under the Act of 1897, decided in favour of the railway company, on the ground that the building of a station was merely ancillary to their main purpose—the railway company would be liable as having "undertaken," in this somewhat strained sense, to build a to station, and then having contracted with the contractor do the work And see *Mulrooney* v. *Todd* (25 T.L.R. 103).

In the course of or for the purposes of his trade or business. If the view expressed above be correct, it becomes important to determine the meaning of these words. Whether or not a particular undertaking is or is not in the course of or for the purposes of a trade or business is a question of fact to be determined by the arbitrator in each case. But there is some authority as to the meaning of the words. First as to "trade." In *Harris* v. *Amery* (L.R. 1 C.P. 148) Willes, J., said that trade had a technical meaning of buying and selling, and he decided in that case that farming was not a trade. In the same way a circus owner is not

Digitized by Google

engaged in trade (*Speak* v. *Powell*, L.R. 9 Ex. 25; and see *Nash* v. *Hollinshead* [1901], 1 K.B. 700). On the other hand, the publication of the Law Reports is a trade, although not primarily engaged in with a view to making a profit (*In re The Incorporated Council of Law Reporting*, 22 Q.B.D. 279).

As to business—Jessel, M.R., in *Smith* v. *Anderson* (15 C.D. 247), says (at p. 258): "Anything that occupies the time and attention and labour of a man for the purpose of a profit is a business."

According to the Century Dictionary, business is "a matter or affair that engages a person's attention and requires his care; an affair receiving or requiring attention; specifically that which busies or occupies a person's time, attention, and labour as his chief concern; that which one does for a livelihood, occupation, employment."

"For the purposes of" is a much wider expression than merely "in the course of," and, it is submitted, is expressly inserted to cover such cases as those of a manufacturer making an addition to his plant or a railway company building a new station.

Whole or any part. The marginal note defines this section as "sub-contracting"; this is somewhat misleading, for in the case where the "whole" of the principal's work is to be done by the contractor, there is no sub-contracting in the ordinary sense of that term. "Sub-contracting" more accurately describes the case where the principal splits up small portions of the work among a number of different people, but in this section it is sufficient if the original contractor ("the principal") delegates the whole of his contract to one other man.

Under the Act of 1897, there was a considerable difference of opinion as to whether a sub-contractor could be an undertaker within the meaning of secs. 4 and 7 of that Act. The point was important, because it was only if the sub-contractor was an undertaker, and so was liable to pay compensation apart from sec. 4, that the original contractor could recover from him the amount he had had

Digitized by Google

to pay the workman. See the cases of *Mason* v. *Dean* ([1900], 1 Q.B. 770) and *Cass* v. *Butler* ([1900], 1 Q.B. 777). It was finally decided by the House of Lords in *Cooper and Crane* v. *Wright* ([1902], A.C. 302) that the sub-contractor was an "undertaker" within sec. 7 and therefore was liable to indemnify the "undertaker" within sec. 4, who had paid compensation to the sub-contractor's workman. The use of the words "whole or any part" seems to incorporate the principle laid down in *Cooper and Crane* v. *Wright* into this Act; although even without such words it is submitted that the sub-contractor would be liable to indemnify the principal—as he need no longer be an "undertaker"; it is sufficient if he is an employer under sec. 1.

Compensation under this Act. In the Workmen's Compensation Act, 1897, the "undertaker" was liable to pay to the workman the compensation to which he had become entitled not only under that Act, but also by reason of personal negligence or wilful act independently of the Act—*i.e.*, by virtue of the Employers' Liability Act, 1880, or the common law. The principal's only liability under this present Act is for compensation payable under this Act. It is no doubt true that the number of cases where compensation can be recovered outside the Act will be small, but some such cases will arise and it seems illogical to exclude them from the operation of this section.

Provided that where . . . agricultural work. This proviso is consistent with what has already been submitted to be the objects of this section—*i.e.*, to give the workman a solvent party to proceed against, and at the same time as far as possible to place the burden on the shoulders of a man who is able to guard against accidents taking place.

As to what constitutes "agricultural work" see the case of *Smith* v. *Coles* ([1905], 2 K.B. 827). That was a case where a man claimed compensation under the Workmen's Compensation Act, 1900. The applicant was

Digitized by Google

a skilled carpenter who spent part of his time as keeper and part at doing "odd jobs" about the farm. The Court of Appeal held that there was evidence on which the county court judge could rightly find that the man was "employed in agriculture." Romer, L.J., points out that the Workmen's Compensation Acts are expressed in popular and not in technical language, and should be construed in a popular and not a technical sense; and this remark would presumably apply to the present Act. It can, therefore, be said that although the word "agriculture" has received no definition, it means something more than the mere tilling, sowing, and gathering the produce of the farm.

The Century Dictionary defines agriculture as "the cultivation of the ground; especially, cultivation with the plow and in large areas in order to raise food for man and beast; husbandry, tillage, farming."

Sec. 4, Subsec. 2.

2. Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person, who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act.

A right to be indemnified under sec. 6, subsec. 2, of this Act (*q.v.*, p. 128) can be enforced by action, but the indemnity given by this subsection can only be recovered in arbitration proceedings. This is new law, for it had been held that the indemnity given by the corresponding section of the Act of 1897 could be sued for. This question was before the Court of Appeal in the case of *Evans* v. *Cook* ([1905], 1 K.B. 53). There an action was brought to recover an indemnity under sec. 4 of the Workmen's Compensation Act, 1897, and the defence was that the

Digitized by Google

proceedings should have been by arbitration. It was held, however, that there was nothing in that Act which took away any right of action. The present Act by express words says that an arbitration shall be the proper proceeding, the object being no doubt to enable the whole matter to be settled at the original arbitration between the employer and workman.

The method of bringing the party from whom the indemnity is claimed before the Court is dealt with in the rules (19–23, *q.v.*, p. 287–288). These rules are framed with a view to having all three parties—applicant, respondent, and indemnifying party—before the Court at once; and there is no provision by which the respondent may, if he finds out after the original arbitration that he has a right to be indemnified, proceed to enforce his right.

3. Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal. Sec. 4, Subsec. 3.

Of course, the workman cannot recover from both principal and contractor. But there does not seem to be anything in this section which compels him to exercise an option and stick to it; and it is submitted that he may proceed against the principal first, and if it appears that the principal is not liable because, *e.g.*, the contract which he made was not "in the course of or for the purposes of his trade or business," then the applicant might institute proceedings against the contractor and obtain compensation.

4. This section shall not apply in any case where the accident occurred elsewhere than on or in or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management. Sec. 4, Subsec. 4.

Digitized by Google

In the Act of 1897 the operation of sec. 4 is excluded if the contract was "merely ancillary or incidental to and no part of or process in the trade or business carried on by the undertakers." The object of the present Act is to include in the operation of the section cases which are excluded by the above quoted phrase (see note on *Pearce* v. *London and South Western Railway Company* ([1900], 2 Q.B. 100, supra, p. 115).

The effect of this subsection is that the liability does not accrue if the work is done off premises which either belong to the principal or over which he has control or management. This is consonant with the principle of placing the burden on the shoulders of a man who has some opportunity of safeguarding against accidents.

On, in, or about premises. The phrase "on, in, or about" is used in sec. 7 of the Act of 1897 and has been the subject of numerous decisions. The result of these appears to be that the word "about" in this context means "in close proximity to" rather than "concerned with"—*i.e.*, it is used with reference to the locality at which the accident occurred. The first case on the point is *Powell* v. *Brown* ([1899], 1 Q.B. 157). There a workman was injured while loading a cart at the entrance to a factory yard, and it was held by the Court of Appeal that the accident occurred "about" a factory.

In *Louth* v. *Ibbotson* ([1899], 1 Q.B. 1003), on the other hand, a carter in the employment of a factory owner was injured while unloading a cart at a distance of a mile and a half from the factory, and it was held that this was not "about" a factory.

In *Chambers* v. *Whitehaven Harbour Commissioners* ([1899], 2 Q.B. 132) workmen were employed on a dredger at some harbour works which were engineering works within sec. 7 of the Act of 1897. Mud was got up in the dredgers and transferred to hoppers. The hoppers then proceeded to sea and the mud was thrown overboard. A workman was drowned while throwing

Digitized by Google

the mud from the hopper. It was held that this was not "about" the engineering work carried on on the dredger.

In *Fenn* v. *Miller* ([1900], 1 Q.B. 788) a workman was injured while bringing a cart laden with materials to a factory and while still over 100 yards away from it. This was held not to be "about" the factory.

In *Turnbull* v. *Lambton* (82 L.T. 589) a colliery company owned a private railway which was not a railway within the meaning of sec. 7 of the Act of 1897. A driver was killed on this line, and his dependants contended that this was "about" a mine. The Court of Appeal, however, decided that it was not.

The case of *Rogers* v. *The Mayor, etc., of Cardiff* ([1905], 2 K.B. 832) is somewhat curious. There the applicant was a workman in the employment of a corporation who were the owners of a system of electric tramways, and his duty was to repair the overhead wires. On the day of the accident he had repaired the wires at one place by means of a tower-wagon. In proceeding along a street which followed the line of the tramway to a place at which he had also to repair the wires he was thrown from the wagon and injured. It was held that, having regard to the obligation on the corporation, as undertakers, to repair and keep in repair the whole extent of the tramway system each act of repair could not be treated as a separate engineering work, and that it was competent to the arbitrator to find that the accident happened "about" the engineering work in which the workman was employed.

The case of *Back* v. *Dick, Kerr, & Co.* ([1906], A.C. 325) gave rise to considerable differences of judicial opinion. In that case a workman in the service of contractors, who had undertaken to take up the rails of horse tramways in a town and lay down rails for electric tramways, was injured by an accident while engaged in unloading and stacking rails for the new tramways in a railway yard. The rails had been brought by the railway and the

Digitized by Google

contractors were allowed by the railway company to use the yard for the storage of the rails till they were required for the tramway. At the time of the accident the only work begun under the contract was the taking up of rails in a street 700 yards from the railway yard. It was held by the majority of the House of Lords that the workman was not at the time of the accident employed on, in, or about an engineering work.

In *Andrews* v. *Andrews and Mears* ([1908], 2 K.B. 567) a workman was employed in connection with paving operations by a sub-contractor, his duties being to cart materials and remove rubbish. He was killed by a fall from his cart at a distance of two miles from the works. It was held that the accident had not occurred "on, in or about premises on which the principal contractor had undertaken to execute the work or which were otherwise under his control or management."

See also *Davies* v. *Rhymney Iron Company* (16 T.L.R. 329); *Francis* v. *Turner* ([1900], 1 Q.B. 478); *Middlemiss* v. *Berwickshire County Council* (2 F. 392); *Wrigley* v. *Whittaker* ([1902], A.C. 299); *Pattison* v. *White* (20 T.L.R. 775); *Atkinson* v. *Lumb* ([1903], 1 K.B. 861).

Digitized by Google

SECTION V

1. Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the Enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies, and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer. Sec. 5.

2. If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

3. There shall be included among the debts

Digitized by Google

which under sec. 1 of the Preferential Payments in Bankruptcy Act, 1888, and sec. 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt, and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those Acts, and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.

4. In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by sec. 9 of that Act and that section shall have effect accordingly.

5. The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

Digitized by Google

6. This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

The first subsection of this section corresponds roughly with sec. 5 of the Workmen's Compensation Act, 1897, but all the rest is new law. The scheme of sec. 5 of the Act of 1897 was to give to the workman a first charge on the sum paid by the insurers. The insurers of course would only be liable to pay the sum due to the workman, so in fact the latter would get it all. The method was for the county court judge to direct the insurers to pay the sum into the Post Office Savings Bank, and it was then invested in accordance with the first schedule to the Act.

The following difficulty might arise under that section, and this section is designed to meet it:—

The workman's claim was of the nature of a proof in bankruptcy. Therefore his must be a provable debt, so far as his claim might have exceeded the sum he got from the insurers. If the amount had been ascertained before the bankruptcy, there was no difficulty. But if the employer became bankrupt between the accident and the final adjustment, it is not clear if the debt was provable. The Bankruptcy Act, 1883, sec. 37, says that debts are provable if they are "demands in the nature of unliquidated damages arising other than by reason of a contract promise or breach of trust." It might be argued that this is a demand arising out of the contract of employment. But it seems more probable that sec. 37 covers a case of workmen's compensation; and therefore in the case put the workman could recover nothing from the employer's estate. Presumably also he could get nothing from the insurer, as the insurer would never become liable to the employer.

Further than that, even if this view is wrong, sec. 10 of the Bankruptcy Act, 1883, says: "The Court may at

Digitized by Google

any time after the presentation of a bankruptcy petition stay any action, execution, or other legal process against the property or person of a debtor." The rule seems to be that actions are stayed if the claim is one from which the discharge would release the debtor. Therefore it is very possible that a workman's claim might have been stayed and his right to compensation defeated.

Subsec. 1 of this present Act expressly excludes all rules of bankruptcy, and puts the insurer in the place of the employer. It is not very clearly expressed, but obviously means that the workman is to take his proceedings against the insurer instead of against the employer; and the words "be subject to . . . employer" appear to get over any difficulty about unprovable debts.

It should be noticed that this section only applies to contracts of insurance against liability under this Act. Therefore if the workman's claim arises under the Employers' Liability Act, 1880, or the common law, the section does not apply.

Further, the section apparently does not apply to an unincorporated body which dissolves.

Right of the employer against the insurers. This is inelegantly phrased; for the employer's right is merely to be indemnified by the insurer for any sum he pays to the workman. The meaning is that the workman can recover from the insurer the same sum as the employer could have recovered if he (the employer) had paid compensation to the workman.

Same rights and remedies. Presumably from the date of the "transfer" all notices, claims, and so forth should be served on the insurer.

The liability wherefor accrued. The liability has not accrued due until the compensation is fixed either by agreement or arbitration.

The Preferential Payments in Bankruptcy Act, 1888, 51 and 52 Vic. c. 62, sec. 1, says: "In the distribution of the property of a bankrupt and in the distribution of the assets of any company being wound up under the

Digitized by Google

Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts— "

(*a*) All . . . rates.

(*b*) Wages for four months not exceeding £50.

(*c*) Wages of labourers up to £25.

The other provisions of that Act enact that such sums as have priority are to be paid equally and in full, they are to be paid forthwith so far as possible, and in the case of a distraint they are to be a first charge.

The Preferential Payments in Bankruptcy (Ireland) Act, 1889, 52 and 53 Vic. c. 60, sec. 4, practically extends the same provisions to Ireland.

The Preferential Payments in Bankruptcy Amendment Act, 1897, 60 and 61 Vic. c. 19, protects these payments against debenture-holders and holders of floating charges.

Where the compensation is a weekly payment, etc. When paid this lump sum would no doubt be used to purchase an annuity. The provisions for arriving at the sum contained in Sched. I. sec. 17 (*q.v.*) are as follows: Such a sum is to be paid as would, if the incapacity were permanent, be sufficient to purchase an annuity from the National Debt Commissioners equal to 75 per cent. of the periodical payments (see post, p. 230).

The Stannaries Act, 1887, 50 and 51 Vic. c. 43, sec. 9, sets out complicated provisions having in effect the same result as this section. "Miner" is defined in the Act as including all artisans, labourers, and other persons working in and about a mine, except the purser, secretary, agent, or manager.

Digitized by Google

SECTION VI

Sec. 6. WHERE the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof:—

1. The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and—
2. If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

Digitized by Google

This section differs in several respects from the corresponding one in the Workmen's Compensation Act, 1897. That Act gave the workman an option as to whether he would sue his employer or the stranger. He could not sue both. Now this might work an injustice on him—or rather it might make him pay too high a price for an error of judgment. For he might fail in his action—*e.g.*, owing to the Court deciding that there was no negligence on the part of the defendant. He would then have exercised his option, and so be debarred from taking compensation proceedings against his employer, although his claim against the latter might be otherwise unanswerable. Or, again, he might recover a trifling sum as compensation, and then be unable to bring an action in which he claimed a much greater sum.

The present section gets over this difficulty by giving to the workman the right to take both proceedings, although this is limited by only permitting him to recover one amount of money.

It should be noticed that sec. 6 of the Workmen's Compensation Act, 1897, gave no new rights to a workman, and only had the effect of limiting those which he already had by the combined operation of the common law and the other sections of the Act. This present section does away with any such limitation, and has, it is submitted, no effect in either enlarging or limiting the rights which the workman would have had without it. It was probably thought necessary to insert it in the Act in order to make it clear that the limitations imposed by sec. 6 of the Act of 1897 had been done away with. But it is suggested that the law would be the same if sub-section (i) were omitted altogether.

Circumstances creating a legal liability. It has been held in *Page* v. *Burtwell* ([1908], 2 K.B. 758) that these words mean circumstances creating a *primâ facie* legal liability, not necessarily a claim prosecuted to judgment. In that case a workman made a claim against a third party, who admitted the justice of the claim and paid the

Digitized by Google

workman a weekly sum. It was held that he had recovered damages against a stranger and could not commence compensation proceedings against his employer. And compare with this *Oliver* v. *Nautilus Company* ([1903], 2 K.B. 639).

Where the injury for which compensation is payable. These words are, of course, not strictly accurate, for it is only *after* the compensation proceedings have been taken that it is possible to tell whether an injury *is* one for which compensation is payable. It would be more exact to say "an injury for which it is alleged that compensation is payable."

In the same way, it should be noticed that, if a workman fail in his compensation proceedings, there is no "injury for which compensation is payable," and therefore the section does not come into operation at all.

This section must be distinguished from the cases where the workman has an alternative remedy against the employer. In such a case he has to make his choice as to which remedy he will pursue and is bound by his choice (cf. *Edwards* v. *Godfrey* ([1899], 2 Q.B. 333), and see pp. 72–75).

Both damages and compensation. What would be the position if both proceedings are running at once, as will no doubt frequently be the case? One set of proceedings is finished first—say, the action. The workman has then recovered damages. Suppose a few days later an award of compensation is made and is for a greater sum. May the workman elect to take the compensation? *Primâ facie* it would appear that he cannot, as he has already recovered damages, and the section says he may not get both. Nevertheless, it is submitted, with considerable doubt, that it is the meaning and intention of the section that in such a case he may take the larger sum. Otherwise the double remedy given would be useless except where the workman entirely failed in the first proceedings. Now it has already been pointed out that where the workman takes compensation proceedings first and

Digitized by Google

fails altogether, the section does not apply at all. If we have to say, as a literal interpretation of these words compels us to, that it does not apply in either of the cases where a small sum is recovered in the first proceedings, it leaves only one possible case where the section *could* apply—*i.e.*, where the first proceedings are an action and fail altogether.

It is submitted, therefore, that what is meant by these words is that the workman may not *take* two sums, but only one, and that he may recover in the second proceedings although he has been successful in the first, keeping only that sum—damages or compensation, as the case may be—which is the greater.

Subsec. 2 is an elaboration of the concluding words of sec. 6 of the Workmen's Compensation Act, 1897. That Act only gave the indemnity to the employer himself. It is now given to any one who has paid the compensation, who might be the employer, or the insurer (see sec. 5, p. 123), or the "principal" (see sec. 4, p. 112), and also to any person who has had to pay an indemnity under sec. 4—*i.e.*, the "contractor."

The person by whom, etc., *and any person*, etc. This is presumably disjunctive. If, therefore, the "principal" is only partially indemnified by the "contractor," owing to the latter's bankruptcy, each could recover the amount he had paid from the indemnifying party.

Indemnity.—The indemnity includes the costs of the proceedings in arbitration (see *Great Northern Railway Company* v. *Whitehead*, 18 T.L.R. 816).

Arbitration. If an indemnity is sought under sec. 4, there is no right to choose the tribunal, and the matter must be settled by arbitration; and it will be remembered that the Rule Committee have taken the view that this is the *same* arbitration as the one in which the compensation is fixed (see p. 119). Under this section the parties can choose their tribunal, and it is easy to see that the indemnity question could not always be settled at the original arbitration, for very often the employer will not

Digitized by Google

know of the indemnifying party until an award of compensation is made. It should be noticed that the section adopts the principle laid down in *Evans* v. *Cook* ([1905], 1 K.B. 53).

By consent of the parties. This provision may be very useful, as it will enable the parties to take the matter before the arbitrator who made the award.

Digitized by Google

SECTION VII

1. This Act shall apply to masters, seamen, and apprentices to the sea service, and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications :— Sec. 7.

(*a*) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident ;

(*b*) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months

Digitized by Google

after news of the death has been received by the claimant;

(*c*) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by secs. 691 and 695 of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

(*d*) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial;

(*e*) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice;

(*f*) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full, notwithstanding anything in

Digitized by Google

sec. 503 of the Merchant Shipping Act, 1894 (which relates to the limitation of the shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity, under the section of this Act relating to remedies both against employer and stranger, as if the indemnity were damages for loss of life or personal injury.

(*g*) Subsecs. 2 and 3 of sec. 174 of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands;

2. This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

3. This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if the pilot when employed on any

Digitized by Google

such ship as aforesaid were a seaman and a member of the crew.

This section embodies an entirely new principle. None of the earlier Acts dealing with workmen's compensation or employers' liability apply to seamen. This seems a little curious when we remember that seamen have always been the favourites of the Legislature. They have been presumed by the law—with how much of truth is not known—to be a class of people peculiarly unable to take care of themselves, and in several matters they have been put in an exceptionally favourable position —*e.g.*, by the Wills Act, and by the various provisions in the Merchant Shipping Acts by which the freedom of contract between owner and seamen has been hedged round by restrictions in favour of the sailors. It would appear inconsistent, therefore, if in this matter they had been left in a position less favourable than the rest of the population.

It had been contended that sailors were within the provisions of the Act of 1897, but this contention was overruled by the House of Lords in *Houlder Line, Ltd.*, v. *Griffin* ([1905], A.C. 220), on the ground that the shipowner was not an "undertaker" within the meaning of the Act.

Masters. The Merchant Shipping Act, sec. 742, defines a master as including "every person (except a pilot) having command or charge of any ship."

Seamen. The same section defines a seaman as including "every person (except masters, pilots, and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship."

The meaning of "seaman" was discussed in the following cases: *R.* v. *Judge of City of London Court* (25 Q.B.D. 339); *Re Great Eastern Steam Shipping Company* (5 Asp.M.C. 511); *Thomson* v. *Hart* (28 S.L.R. 28).

Apprentices. As to the position of apprentices to the

Digitized by Google

sea service and sea-fishing services respectively, see the Merchant Shipping Act, secs. 105–109 and secs. 392–398. "Boys" and "apprentices" are in a different position, and this Act does not apply to "boys."

An apprentice would presumably be under twenty-one, and, if injured, would accordingly get compensation on the scale set out in para. 1 (*b*) of the first schedule (see p. 198).

Registered British Ship. By the Merchant Shipping Act, sec. 2, subsec. 1: Every British ship shall, unless exempt from registry, be registered under this Act.

By sec. 1: A ship shall not be deemed to be a British ship unless owned wholly by persons of the following description (in this Act referred to as persons qualified to be owners of British ships), namely:—

(*a*) natural born British subjects;

(*b*) persons naturalised by or in pursuance of an Act of Parliament of the United Kingdom, or by or in pursuance of an Act or ordinance of the proper legislative authority in a British possession;

(*c*) persons made denizens by letters of denization; and

(*d*) bodies corporate established under and subject to the laws of some part of her Majesty's dominions, and having their principal place of business in those dominions.

Provided that any person who either—

(i) being a natural born British subject, has taken the oath of allegiance to a foreign sovereign or state, or has otherwise become a citizen or subject of a foreign state; or

(ii) has been naturalised or made a denizen as aforesaid;

shall not be qualified to be owner of a British ship unless, after taking the said oath or becoming a citizen or subject of a foreign state, or on or after being naturalised or made a denizen as aforesaid, he has taken the oath of allegiance to Her Majesty the Queen, and is during the

Digitized by Google

time he is owner of the ship either resident in Her Majesty's dominions or partner in a firm actually carrying on business in Her Majesty's dominions.

In accordance with this, a British ship means presumably only such ships as are owned by persons qualified to own British ships, as above defined, and ships built for such persons, if, on completion, they become the property of such persons. A ship built in England to be delivered to foreigners has been held not to be a British ship for the purposes of registration, although still the property of the builders (*Union Bank* v. *Lenanton*, 3 C.P.D. 243; and *Chartered Bank of India* v. *Netherlands India Steam Navigation Co.*, 10 Q.B.D. at p. 534, and see Abbott on Merchant Shipping, 14th ed., p. 81).

Or any other British ship or vessel. This must mean the two classes of ships which need not be registered, viz. :—

(i) Ships not exceeding 15 tons burden employed solely in navigation on the rivers or coasts of the United Kingdom or on the rivers or coasts of some British possession within which the managing owners of the ships are resident.

(ii) Ships not exceeding 30 tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of St. Lawrence, or on such portions of the coasts of Canada as lie bordering on that gulf.

Ship. The Merchant Shipping Act, 1894, sec. 742 defines ships as including "every description of vessel used in navigation not propelled by oars."

Vessel. The same section defines vessel as including "any ship or boat or any other description of vessel used in navigation."

An owner may register his ship at any port he chooses (see Abbott on Merchant Shipping, 14th ed., p. 89). So presumably the latter part of subsec. 1 would include ships registered in the colonies, so long as they were

Digitized by Google

British ships and their owner or manager, etc., resided in the United Kingdom.

As to the Modifications.—(*a*) Where it is the master himself who is injured, there is no special provision as to the way the notice is to be served or the claim made. He must therefore give his notice "as soon as practicable" (see sec. 2, p. 91). That would, if the injury took place in a foreign port, mean by the next homeward mail. If the accident happens on the ship, no notice need be given. But even then he must make his claim for compensation within six months. But if he is unable to do so owing to the movements of his ship, he would no doubt be protected by proviso (*b*) of sec. 2, subsec. 1.

Notice that the seamen need give no "notice of accident" if the accident occurs on the ship, but they are not exempted from making the "claim for compensation" within the ordinary time. Such a claim may be served on the master; but it may be served on the employer if the seaman prefers to do so.

(*b*) Compare this with (*g*), infra (*g.v.*).

(*c*) The Merchant Shipping Act, 1894, sect. 691: "Whenever in the course of any legal proceedings instituted in any part of her Majesty's dominions, before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of that proceeding, then upon due proof, if the proceeding is instituted in the United Kingdom, that the witness cannot be found in that kingdom, or if in any British possession that he cannot be found in that possession, any deposition that the witness may have previously made on oath in relation to the same subject-matter before any justice or magistrate in her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence provided that:—

(*a*) "if the deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom; and

Digitized by Google

(*b*) "if the deposition was made in any British possession, it shall not be admissible in any proceeding instituted in that British possession; and

(*c*) "if the proceeding is criminal it shall not be admissible, unless it was made in the presence of the person accused."

The Merchant Shipping Act, 1894, sec. 695, deals with the method of making such documents admissible, their proof, etc.

Notice that this modification (*c*) only applies if the injured person is left behind in the British possession. If he comes home with his ship, he cannot make use of such depositions although the witnesses of the accident may have gone abroad again on another voyage.

(*d*) *If the owner . . . is liable*, etc. This refers to the Merchant Shipping Act, 1894, sec. 207: "If the master of, or a seaman or apprentice belonging to, a ship receives any hurt or injury in the service of the ship . . . in case of death the expense (if any) of his burial shall be defrayed by the owner of the ship, without any deduction on that account from his wages." As to what constitutes the "service of the ship," see *Secretary of the Board of Trade* v. *Sundholm*, 4 Asp.M.C. 196.

(*e*) Sec. 207 of the Merchant Shipping Act, 1894, says: "If the master of or a seaman or apprentice belonging to a ship receives any hurt or injury in the service of the ship . . . the expenses of the maintenance of the master, seaman, or apprentice, until he is cured or dies, or is brought back, if shipped in the United Kingdom, to a port of the United Kingdom, or if shipped in a British possession, to a port of that possession, and of his conveyance to the port . . . shall be defrayed by the owner of the ship, without any deduction on that account from his wages."

(*f*) Sec. 503 of the Merchant Shipping Act, 1894, limits the liability of the owner for loss of life or personal injury to an aggregate sum not exceeding £15 per ton of his ship's burden.

Digitized by Google

That section has been amended by the following Acts :—

1. The Merchant Shipping (Liability of Shipowners) Act, 1898, 61 and 62 Vic. c. 14.

2. The Merchant Shipping (Liability of Shipowners and others) Act, 1900, 63 and 64 Vic. c. 32.

The latter part of (*f*) deals with cases where an indemnity might be claimed under sec. 6. If a ship be sunk and her crew lost in a collision brought about by the negligence of another ship, then the owner of the ship sunk must pay to the dependants of the men lost the full amount to which they are entitled under the schedules of this Act; but such owner can only recover from the owner of the other ship as indemnity a maximum sum of £15 per ton of the ship's (*i.e.* the ship in fault) burden.

It is submitted that the aggregate amount of £15 per ton refers to the *total* amount recovered. So that if the first owner have other claims—as, *e.g.*, for damage done to his ship—as well as those under sec. 6 of this Act, still he cannot recover more in all than the "aggregate" amount.

(*g*) Section 174 of the Merchant Shipping Act, 1894: By subsec. 1 the Board of Trade can recover the wages of seamen lost with their ships, and deal with them by distribution as if they had died.

By subsec. 2: "In any proceeding for the recovery of the wages, if it is shown by some official return produced out of the custody of the Registrar General of Shipping and Seamen, or by other evidence, that the ship has twelve months and upwards before the institution of the proceedings, left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with all hands on board, either immediately after the time she was last heard of, or at such later time as the Court hearing the case may think probable."

By subsec. 3: "Any duplicate agreement or list of the

Digitized by Google

crew made out, or statement of a change of the crew delivered, under this Act, at the time of the last departure of the ship from the United Kingdom, or a certificate purporting to be a certificate from a consular or other public officer at any port out of the United Kingdom, stating that certain seamen and apprentices were shipped in the ship from the said port, shall, if produced out of the custody of the Registrar General of Shipping and Seamen, or of the Board of Trade, be, in the absence of proof to the contrary, sufficient proof that the seamen and apprentices therein named as belonging to the ship were on board at the time of the loss."

(2) *Members of the crew remunerated by shares in the profits.* It is not clear whether these people would be included in the definition of "workman" given in sec. 13 of this Act; but presumably this subsection would not have been inserted unless it had been thought that the people referred to were "workmen"; and it is submitted that the contract they enter into is clearly one of "service."

(3) Part X. of the Merchant Shipping Act, 1894, deals with pilots. By the definition clause (sec. 742) "pilot" includes any person not belonging to the ship who has the conduct thereof.

Pilots are licensed by pilotage authorities and are then called qualified pilots (sec. 586). Apparently this Act would only apply to qualified pilots.

Difficult cases may arise as to when a pilot is "employed on a ship." Suppose he falls into the sea when getting on or off, or remains on the ship for a short time after his employment is finished and is then injured. On the analogy of the cases on "course of employment," "about a factory," etc. (see ante), it may be suggested that the pilot would still be "employed on a ship" while getting on and off, etc.; but it is not possible to give any definite opinion till the matter has been before the Courts.

Digitized by Google

SECTION VIII

Sec. 8, Subsec. 1.

1. WHERE—

(i) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed; or—

(ii) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or—

(iii) the death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspen-

Digitized by Google

sion as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

This is quite new law, and brings within the scope of the Act a class of misfortune which arises "out of and in the course of" certain employments even more frequently and inevitably than "accidents."

It may now happen that a particular occurrence is both an industrial disease and an accident within the Act. For instance, it has been held that anthrax can be caused by an accident (*Brintons, Ltd.*, v. *Turvey* [1905], A.C. 230), and in such a case the advisers of the workman might have to decide under which section it was more advantageous to proceed.

The certifying surgeon. This official is appointed under sec. 122 of the Factory and Workshop Act, 1901, 1 Edw. VII. c. 22.

Third Schedule. The list of diseases mentioned is being added to from time to time in accordance with the recommendations of a Royal Commission appointed for the purpose. See note on subsec. 6 of this section, infra, p. 152.

At the work at which he was employed. It is therefore no defence to show he could earn equally good wages at some other work. But if he were in fact doing so, the award would only be for a nominal sum; and the workman could have the award revised if his capacity decreased later on as a result of the disease (see note on Sched. I. infra, p. 225).

Regulations made under the Factory and Workshop Act. The power to make such regulations is given to the Secretary of State by secs. 79–86 of that Act.

The death of a workman is caused by any such disease. Cases may arise in which it is difficult to say what is the cause of death. For instance, the shock of the indus-

Digitized by Google

trial disease might bring on some other illness, which latter is the immediate cause of death. In such cases it would be necessary for the arbitrator to decide whether the industrial disease was the *causa sine qua non*. If it were the dependants would be entitled to compensation.

The disease is due to the nature of the employment. Notice that the words are not "the surgeon says the disease is due," therefore this is a fact to be determined by the arbitrator in each case. Industrial diseases are so closely connected with particular trades that it is not likely that serious questions will arise on this point. But it sometimes happens that the disease may be due either to the nature of the employment or to some other cause. Thus in *Haylett* v. *Vigor & Co.* ([1908], 2 K.B. 837) the workman, a painter, had died from granular kidney. This is a sequela of lead-poisoning and also of other diseases. It was not proved that lead-poisoning was the cause of death, but neither was it proved by the employer that it was not. Under these circumstances it was held that the dependants of the deceased workman were not entitled to compensation.

As if the disease were a personal injury by accident. It may be both. If so, the time for making the claim might differ; for if it is treated as an accident the time runs from the happening of the accident, and if as a disease from the date of suspension or disablement; therefore in some cases the workman might gain additional time by treating it as a disease.

(*a*) The disablement or suspension shall be treated as the happening of the accident;

(*b*) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

Digitized by Google

It will no doubt become a practice to get such a declaration from the workman. Notice that the employer is only protected if the representation is made at the time of entering the employment. Therefore men who have had such a disease before this Act came into force, and who were in a situation at the time of its commencement, will be within this section so long as they remain in the same employment; for it is not possible that they could have signed any such representation "at the time of entering the employment."

If the representation is in fact untrue, it is hard to see how it could be other than "wilful and false."

(*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due.

Provided that—

(i) the workman or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment, shall not be liable to pay compensation; and—

(ii) if that employer alleges that the disease was in fact contracted whilst the workman was in

Digitized by Google

the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and—

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers, who during the said twelve months employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation;

Modification (*c*) with the three provisos and the rules made under it (Rule 39, sec. 4, *a*, *b*, *c*, and *d*) points out the person from whom the compensation is to be recovered. If the workman has only served one employer during the twelve months there is no difficulty. If he has served more than one employer, and the employer sued has reason to believe that the disease was contracted in the service of one of the others, he must require the workman to supply him with the name and address of all the other employers. If the workman fails to furnish such information, then the employer has only to prove that the disease was not contracted in his service in order to be successful. On the other hand, if the information is furnished, it becomes the duty of the employer to bring before the arbitrator the other employer in whose service he alleges the disease was contracted. The arbitrator will then decide if the allegation be true, and if so the second employer has to pay the compensation.

Digitized by Google

It is submitted that it is always wise for the employer to ask the workman to furnish the information as to the name and address of the other employer, even if he, the first employer, already knows it. For if the workman fails to furnish it, then the employer is relieved of the duty, which may be a troublesome one, of fixing the second employer with the liability.

Rule 39, sec. 4 (*a–d*), deals with this subject. The method of making a second employer a party is to file a notice with the registrar, who thereupon adds his name as a respondent, and when the matter comes before the arbitrator he finally adjusts the rights of all the parties.

Proviso (iii) deals with the position when the disease is of such a nature as to be contracted gradually. Notice that the Act does not say "if the disease is in fact contracted gradually." It has apparently been considered that it is not possible in the case of such diseases as, *e.g.*, lead-poisoning, to fix any particular moment at which the disease commenced; and it has therefore not been left open to any employer to show that the disease was in fact contracted *uno ictu;* but in such cases all the employers, who during the previous twelve months have employed the workman in the employment to the nature of which the disease is due have to contribute.

The employers do not necessarily contribute in equal proportions, but the amount is to be apportioned—presumably in proportion to the amount of money which the workman has earned from each employer during the specified twelve months. At any rate, it is submitted that this would be the most reasonable method, as it takes into account both the time spent in the service of each employer and the weekly wages earned.

(*d*) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable;

Digitized by Google

This is sufficiently clear. Under provisos (i) and (ii), supra, the employer who is finally adjudged to be the one on whose premises the disease was contracted is "the employer from whom compensation is recoverable"; under (iii) the "employer from whom compensation is recoverable" is the one who is first made a respondent—the others merely contribute towards the compensation.

(*e*) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment;

The last words are, of course, necessary to cover the case where the workman had left the employment before the disease manifested itself.

(*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall, in accordance with regulations made by the Secretary of State, be referred to a medical referee, whose decision shall be final.

Sec. 10 (*q.v.*, infra, p. 158) deals with medical referees.

2. If the workman at or immediately before the date of the disablement or suspension was Sec. 8, Subsec. 2.

Digitized by Google

employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment unless the employer proves the contrary.

In order to recover compensation for an industrial disease, the claimant has to prove (*inter alia*) that the disease is due to the nature of his employment. This subsection deals with the manner of proof in this way. It refers to a schedule in which a list of diseases is placed opposite a list of employments. If the workman is employed in one of the employments there mentioned and contracts the corresponding disease, then it is to be presumed by the Court that the disease was due to the nature of the employment, except in cases where the certifying surgeon certifies that in his opinion such is not the case, and unless the employer proves the contrary. The result of this is that where the disease and employment "correspond" in the schedule, the onus of proving that the disease is not due to the nature of the employment is on the employer. But if the disease and the employment do not "correspond" in the schedule, then the onus is on the workman to show that the disease is in fact due to the nature of the employment. But where death ensues the onus of proving that the death was caused by the disease is on the dependants (see *Haylett* v. *Vigor* [1908], 2 K.B. 837, ante, p. 145).

Notice that the workman can only recover if his disease is one of those mentioned in the schedule, and the section does not apply to other illnesses. But apparently the

Digitized by Google

disease may be contracted in the course of *any* employment, if the workman can show it is due to the nature of the employment.

3. The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section. Sec. 8, Subsec. 3.

A dentist is not a medical practitioner (the Dentists Act, 1878, sec. 27). Therefore, semble, he could have no duties under this Act. But dentists are often qualified medical practitioners as well; and such people apparently could be appointed certifying surgeons, and would be entitled to fees for work done for which a dentist's knowledge was requisite. For instance, some forms of phosphorus-poisoning affect the teeth, and presumably, therefore, a certifying surgeon who was also a dentist would be entitled to fees for work done by him *qua* dentist in such cases. The rules made under this subsection are set out in Appendix E.

4. For the purposes of this section, the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given:— Sec. 8, Subsec. 4.

Provided that—

(*a*) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine;

(*b*) Where a workman dies without having obtained a certificate of disablement, or is at

Digitized by Google

the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

As to the respective duties of medical referees and certifying surgeons under this section, see ante, p. 40.

Sec. 8, Subsec. 5.

5. In such cases and subject to such conditions as the Secretary of State may direct, a medical practitioner, appointed by the Secretary of State for the purpose, shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

This subsection gives power to the Home Secretary to appoint additional certifying surgeons under this Act, in case the number appointed under the Factory and Workshop Act should not be sufficient to cope with the additional work. A medical practitioner is defined by the Medical Act, 1858, sec. 34.

There does not seem to be any distinction taken between the words "medical" and "surgical" in this section.

Sec. 8, Subsec. 6.

6. The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

A Commission is now making inquiries into the nature of industrial diseases, with a view to adding to the list of diseases and employments to which this section applies. The Home Secretary has already made one

Digitized by Google

order adding to the list (May 22, 1907. Cd. 3539). See Appendix I.

The sentence "and to injuries due . . . injuries by accident" is hard to understand. After the very wide interpretation which has been put upon the word "accident," one would have thought that all physical injuries which a workman could suffer would be either diseases or accidents; and it is, therefore, somewhat hard to see what manner of disaster can be here referred to.

7. Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society, and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may, for the purposes of this provision, treat the industry, as carried on by employers in that locality or of that class, as a separate industry. Sec. 8, Subsec. 7.

8. A Provisional Order made under this section shall be of no force whatever unless and until it is Sec. 8, Subsec. 8.

Digitized by Google

confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner.

Sec. 8, Subsec. 9.

9. Any expenses incurred by the Secretary of State in respect of any such Order, Provisional Order, or confirming Bill, shall be defrayed out of moneys provided by Parliament.

The scheme laid down in these three subsections is quite new. In order to bring the subsections into operation it must be shown that—

(i) Such a society exists for the industry, and is willing that the Order should be made;

(ii) the majority of employers are already insured in it.

If such a state of facts exists, then, on the application of any of the employers or workmen, the Home Secretary may require all the remaining employers to insure in it.

Should an employer neglect to insure after a Provisional Order has been made, no method is pointed out in the Act of compelling him to do so.

With regard to Provisional Orders, see "Dodd and Wilberforce on Private Bill Procedure," p. 71.

Any employers or workmen. Apparently two of either class are sufficient to make the application.

Sec. 8, Subsec. 10.

10. Nothing in this section shall affect the rights of a workman to recover compensation in respect

Digitized by Google

of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

This section refers to cases like *Brintons, Ltd.*, v. *Turvey* ([1905], A.C. 230), where it was held that a disease which was contracted in a "fortuitous and unexpected" manner was an injury by accident within the meaning of the Workmen's Compensation Act, 1897. In that case the disease (anthrax) was caused by a germ entering the man's eye.

Digitized by Google

SECTION IX

Sec. 9, Subsec. 1.

1. THIS Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person.

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

The first paragraph of this section is taken almost verbatim from the Act of 1897, with only such verbal alterations as are necessary to fit in with the wider scope of the present Act. The second paragraph is new.

Persons in the naval or military service of the Crown. Persons subject to military law are defined in the Army Act, 1881 (44 and 45 Vic. c. 58), secs. 175, 176. Persons subject to Naval Law are defined in the Naval Discipline Act, 1861 (24 and 25 Vic. c. 115), sec. 77.

Provided that in the case of a person employed. This proviso is to meet the difficulty caused by the rule that no action lies against the Crown; the only remedy apart from this section would be by petition of right.

Sec. 9, Subsec. 2.

2. The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act

Digitized by Google

their warrant made under sec. 1 of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act.

This is almost identical with the corresponding provision in the Workmen's Compensation Act, 1897.

Superannuation Act, 1887, 50 and 51 Vic. c. 67, sec. 1. "Where a person employed in the civil service of the State is injured (*a*) in the actual discharge of his duty, and (*b*) without his own default, and (*c*) by some injury specifically attributable to the nature of his duty, the Treasury may grant to him, or, if he dies from the injury, to his widow, his mother, if wholly dependent on him at the time of his death, and to his children, or to any of them, such gratuity or annual allowance as the Treasury may consider reasonable, and as may be permitted by the terms of a warrant under this section."

The *warrant* may be found in the House of Commons Sessions Paper, 1887, No. 349, and is in some respects more stringent than the provisions of this Act, but does not apply to such a large class of persons as the "dependants" under this Act.

Scheme . . . certified. As to this see the note on sec. 3, supra, pp. 104–11.

Digitized by Google

SECTION X

Sec. 10.

1. The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of and other expenses incurred by medical referees under this Act shall, subject to regulations made by the Treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

2. The remuneration of an arbitrator appointed by a judge of county courts under the Second Schedule to this Act shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury.

It is not easy to see why two such totally different matters as the method of appointing medical referees and the remuneration of arbitrators should be included in one section. In the Workmen's Compensation Act, 1897, the

Digitized by Google

latter question is dealt with in the second schedule (sec. 3).

With regard to medical referees and their duties see Sec. 8 and Sched. I. para. 15 and Sched. II. para. 15 and the notes thereon. These duties are two-fold: they may have to decide differences between employer and workman on the medical certificate (Sched. I. para. 15) or they may have questions which arise during the arbitration referred to them by the arbitrator (Sched. II. para. 15) (and see also Chapter I. pp. 40–43).

The rules regulating the duties of medical referees under Sec. 8 are set out in Appendix E.

The rules regulating the duties of medical referees under the two Schedules are set out in Appendix G.

Digitized by Google

SECTION XI

Sec. 11.

1. If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any Court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the Court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge, requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

2. In any legal proceeding to recover such

Digitized by Google

compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

3. Sec. 692 of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

The law laid down in this section is quite new to this branch of law, but should be compared with the remedies given by the Shipowners' Negligence Act, 1905 (5 Edw. VII. c. 10). Secs. 1, 2, and 3 of that Act are almost identical with this section, the same protection being given to plaintiffs seeking damages for personal injuries as is here given to workmen seeking compensation.

Sec. 692 *of the Merchant Shipping Act,* 1894, authorises certain officials to board and detain a ship. A fine of £100 is imposed if the ship nevertheless goes to sea without settling the claim or giving security. That section applies equally to British and to foreign ships; but under this present Act there can be no case where a foreign ship is affected. The section, further, does not apply if any of the owners reside in the United Kingdom, or, in the case of a corporation, if the corporation has an office in the United Kingdom at which writs could be served. So that it is submitted that the only case in which it does apply is where all the owners of a British ship registered in the United Kingdom reside abroad (see the note on sec. 7, supra, p. 137).

Digitized by Google

In accordance with the rules of the Court. Rule 37 deals with this. Since this section is practically a repetition of the Shipowners' Negligence Act, Rule 37 provides that applications under this section shall be made in accordance with the rules under that Act. As, however, no such rules have as yet been made, Rule 37 provides how applications under this section are to be made pending their issue. The application may be made to any Court; the judge may require an undertaking as to damages; notice is to be given to the other side where practicable; and the judge may accept a solicitor's undertaking to give security instead of making an order for detention.

Rule 38 should also be noticed. The Shipowners' Negligence Act enables an employer who has paid compensation under the Workmen's Compensation Act, 1897, and who claims to be indemnified by the owner of a foreign ship, to obtain an order of detention under that Act. This present section, as already pointed out, supra, does not apply to foreign ships and does not contain a similar provision; but Rule 38 provides for applications for such orders.

Are probably liable. It is not quite clear how much has to be proved, but it is submitted that a case sufficiently strong as to require evidence by the shipowner to displace it must be made out.

The person giving security shall be made defendant. Not necessarily, it is submitted, the sole defendant. For the person giving the security is not necessarily the person from whom compensation is sought. For instance, the judge may accept the security of the solicitor (see supra and Rule 37); and again, it may well be that the master or the consignee gives the security in order to release the ship, although it is the owner from whom compensation is claimed.

The object of this part of the section is to ensure that the money given as security shall be available to satisfy the workman's claim. If such money is in fact appro-

Digitized by Google

priated to the compensation, and the person who gave security can show that not he, but another—*e.g.*, the shipowner—is the person primarily liable, then presumably he could recover such money from the shipowner as money paid to his use.

Digitized by Google

SECTION XII

Sec. 12.

1. EVERY employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

2. Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

Regulations under this section were issued on January 15, 1908, and are set out in Appendix H.

Digitized by Google

SECTION XIII

In this Act, unless the context otherwise requires— Sec. 13.

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

The legal personal representative of a deceased employer is included in the definition, as he was in the Workmen's Compensation Act, 1897. This has the effect of excluding the rule "Actio personalis moritur cum persona"; and if the employer dies before the arbitration, the workman does not thereby lose his compensation. There was no such provision in the Employers' Liability Act, 1880, and therefore the common law rule prevailed and the workman lost his action on the death of the employer (*Gillett* v. *Fairbank*, 3 T.L.R. 618).

If a "dependant" is seeking compensation and dies, the question as to whether his rights descend to his representatives is not so easy to answer as in the case where

Digitized by Google

the employer dies (see this question discussed infra, p. 182.)

The Crown is an employer within this Act (see sec. 9), except in the case of the naval and military services.

Down to the words "deceased employer" this definition is identical with subsec. 2 of sec. 7 in the Workmen's Compensation Act, 1897. The latter part is designed to meet a case where, but for it, the defence might be raised that the employment was "casual," or not in the course of the employment.

It is suggested that this is the reason why the word "temporarily" is used. This word gives rise to some difficulty, for it leads to the view that if the letting or lending be for a considerable regular period, the right to be compensated by the original employer is lost. But this can hardly be so; for, however long the letting may be for, the contract of service is with the original employer; he pays the wages and can dismiss the servant, and it is submitted that he would be the right person from whom to seek compensation.

It is therefore submitted that this clause is only inserted to meet the defence that the accident did not occur in the course of the employment, and that such a defence would fail even if this clause had not been inserted.

"Temporarily" is defined in the Century Dictionary—"in a temporary manner; for a limited time only; not perpetually or permanently."

A person is not an employer within this Act who engages an "independent contractor" to do work for him. As to who is an independent contractor see infra, p. 172.

The Act does not impose any joint liability. Therefore, where a workman in the employ of a glass merchant was injured while repairing the roof of a factory, it was held that he could not make a joint claim against the merchant and the manufacturer (*Herd* v. *Summers*, 7 F. 870).

"Workman" does not include any person employed otherwise than by way of manual

Digitized by Google

labour whose remuneration exceeds £250 a year, or a person whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing ;

The interpretation which will be put on this clause is obviously of very great importance; and as the definition is new to this branch of law, it will be necessary to examine it carefully.

The definition starts by excluding certain classes of people, as follows :—

(i) persons employed otherwise than by way of manual labour, whose remuneration exceeds £250 a year.
(ii) persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business.
(iii) members of a police force.
(iv) outworkers.
(v) members of the employer's family dwelling in his house.

It should be remembered that soldiers and naval sailors are also excluded by sec. 9.

With these exceptions, "workman" means every one who has entered into or works under a contract of service or apprenticeship, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, oral or in writing.

Digitized by Google

It remains to consider in detail the phrases which make up this definition.

(1) *Any person . . . £250 a year.* All workmen who earn £250 or a less sum than £250 a year are within the Act, whatever the nature of their work. Of workmen who earn more than £250 a year, those only are within the Act who do so by way of manual labour. If therefore an accident happens to, *e.g.*, a clerk earning £300 a year, he is not entitled to compensation.

"Remuneration" as used here includes other things besides the wages. Thus board and lodging supplied to a workman have to be taken into consideration. In *Dothie* v. *Robert Macandrew* ([1908], 1 K.B. 803), the deceased "workman" was captain of a ship, and it appeared that his remuneration was £216 a year in cash and his board. It was held by the Court of Appeal that, in considering whether the remuneration exceeded the limit prescribed by the section, the test of the money value of the board provided by the owners was not what the captain saved by the arrangement, or in other words, what he could have boarded himself for, but what the reasonable style of board provided by the owners would have cost him if he had had to purchase it himself. Buckley, L.J., points out that this doctrine requires some qualification in this sense, that if a very luxurious allowance were made, not really for the purposes of the workman, but for the benefit of the master, that would be a factor to be taken into consideration. This should be compared with *Great Northern Railway* v. *Dawson* ([1905], 1 K.B. 331) (see post, p. 203).

All forms of manual work do not constitute "manual labour." In "manual labour" the task done must be chiefly labour performed by the hand. It is not sufficient that a certain amount of hand-work takes place if the principal business is something different. The cases on this point are discussed below at p. 175 (*q.v.*)

(2) *A person whose employment, . . . trade, or business.* There are at present no decisions to guide one in inter-

Digitized by Google

preting these words. But it should be noticed that they are *exclusive* only. It is not therefore the same as saying that every one employed for the purposes of the business *must* be a workman, however casual his employment. It leaves that point open; and the Court in such a case would have to decide whether there was a contract of service or not (see infra, p. 170). It is submitted therefore that a man would not be within the Act who was employed to go on an errand, even if for the purposes of the employer's business; for in such a case there would be no contract of service.

The result would seem to be this: that if the employment be in the way of the employer's trade or business, the casually employed person may or may not be within the Act, according as the Court decides whether or no he has entered into a contract of service. But if the employment be not in the way of the employer's trade or business, then the person casually employed can never be within the Act.

Casual. It is difficult to say what the meaning of this word is until there have been more decisions on it. But it is suggested that an employment is not casual if there is any regularity about it, and if, when the workman finishes the job, there is some understanding, express or implied, that he will be employed again at the same or a similar job. For instance, a man who comes once a week to dig the garden is probably within the Act; and if this be so, it would not seem to make any difference whether he always came on the same day of the week or not. It is suggested, as an extreme case, that if it be an understood thing that he is the man who attends to the garden and that he will continue to present himself at more or less regular intervals for that purpose, then he would be within the Act, provided this understanding rests upon a contract of service express or implied. Thus in *Dewhurst* v. *Mather* ([1908], 2 K.B. 754) a charwoman was employed on Fridays and alternate Tuesdays for a considerable period. She came regularly on those days without special

Digitized by Google

instructions. The Court of Appeal refused to disturb a finding of the county court judge that the employment was regular.

On the other hand, if a man comes to the door and asks to be employed in the garden, and is then and there set to dig for an hour or so, his employment would clearly be casual. Now, if the same man returns after an interval of time, and the same thing occurs again, the mere fact that he had worked before cannot alter the nature of the employment. Thus in *Hill* v. *Begg* ([1908], 2 K.B. 802) a man who earned his living by doing odd jobs was employed by the occupier of a private house to clean his windows. He had been so employed before at irregular intervals of six weeks for about two years. There was no agreement between the parties of either permanent or periodic employment. It was held that the employment was of a casual nature and not within the Act. In this case Buckley, L.J., points out that a man may be regularly employed in an employment of a casual nature, as, *e.g.*, a man who earns his living by waiting at dinner parties.

From this argument it would seem that the line must be drawn between the case of a man who is hired to come from time to time to do a job, although an actual date is never fixed, and that of a man who goes away after his job and for all the employer knows may never come back again.

The determination of this point appears to be a mixed question of law and fact, in which the arbitrator must direct himself as to whether the particular employment can be casual, and then find as a fact whether it is so.

It should be noticed that if the employment is for the purposes of the employer's trade or business the workman is within the Act, although his employment is casual. It is only if the employment is not for the purposes of the trade or business of the employer that he is excluded. This was the *ratio decidendi* in the recent case of *Bargewell* v. *Daniel* (98 L.T. 257). There the de-

Digitized by Google

fendant owned several houses, and was co-owner of three others, which were let to weekly tenants. She collected the rents and generally managed the property, accounting to the other co-owners for rent received on their behalf, but they paid her nothing for doing so. It was held by the Court of Appeal that she was not carrying on the business of an estate agent within the meaning of the Act, so as to be liable to compensate a workman whose employment was of a casual nature and who met with an accident while doing some repairs to the houses.

"Casual" is defined in the Century Dictionary as "occasional; coming at uncertain times, or without regularity, in distinction from stated or regular; incidental."

Trade or business. The meaning of these words has been discussed above at p. 115. It should be noticed that for the purposes of this clause the work carried on by a local authority is its trade or business (see p. 184).

(3) *Member of a police force.*
(4) *Outworker.* } These are both defined in this section of the Act (see below, p. 184).

(5) *Member of . . . house.* Member of a family means the wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister (see p. 183). "Dwelling in his house" seems a very arbitrary test to apply. If a man employs his son and the son is injured, then he must pay compensation if the son is not dwelling in his house, although the son may be living in lodgings at his father's expense. And on the other hand, the son would not be entitled to compensation if he were dwelling in his father's house, although he paid his father a rent.

Any person who . . . employer. Having dealt with the exceptions, the definition goes on to point out who are workmen, and defines that every one is a workman who has entered into a contract of service.

Digitized by Google

What is a contract of service? Stephen, J., in his "Digest of the Criminal Law," 5th ed., p. 271, says: "A servant is a person bound either by an express contract of service, or by conduct implying such a contract, to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such servant to transact."

It is important to distinguish between a servant and an independent contractor; for it has been decided that an independent contractor was not within the meaning of the similar words in the Workmen's Compensation Act, 1897. This distinction was well put by Bramwell, L.J., in his evidence before the Committee of the House of Lords on Employers' Liability (quoted by Mr. Bevan, in his work on "Negligence," 3rd ed., at p. 571), reported in the Parliamentary Papers, 1876, vol. x. p. 58: "To my mind the distinction of the cases where a man is, and where he is not, liable for the negligence of another person, may be defined in this way. If there is a contract between them, so that the person doing the work, or doing the act complained of, has a right to say to his employer, 'I will agree to do it, but I shall do it after my own fashion; I shall begin the wall at this end and not at the other,' there the relation of master and servant does not exist and the employer is not liable. But if the employer has a right to say to the person employed, 'You shall do it in this way, that is to say, not only shall you do it by virtue of your agreement with me, but you shall do it as I direct you to do it,' there the law of master and servant applies and the master is responsible."

See also *Yewens* v. *Noakes* (6 Q.B.D. 530); *Willett* v. *Boote* (6 H. & N. 26); and *Williams* v. *Jones* (3 H. & C. 602).

Notice that in the Workmen's Compensation Act, 1897, the corresponding phrase was "whether contract is one of service or apprenticeship or otherwise"; the word "otherwise" is left out in this present Act; so that

Digitized by Google

a workman is outside it unless he either falls within the above definition of one who has entered into a contract of service or is an apprentice.

On the question of who is an "independent contractor," the following cases must also be noticed :—

Simmons v. *Faulds* (17 T.L.R. 352). In that case the applicant was a foreman bricklayer. He had tendered to the employer for the job in question, and had started work on the tender being accepted. He was to be paid as the work progressed, and he was not to supply any materials, but only the labour and tools. On these facts the Court of Appeal held that he was an independent contractor, and not within the Workmen's Compensation Act, 1897.

In *Evans* v. *Penwyllt Dinas Silica Brick Company* (18 T.L.R. 58) the applicant was a quarryman who was employed under a written agreement on the terms that he should be paid so much for every ton of material that he worked. His tools were found for him, and he used to hire and discharge the men who worked under him. Being in doubt as to his position under the Workmen's Compensation Act, 1897, he gave notice to determine the employment, and explained his position to the defendants, who said he should be compensated in case of accident. He then resumed work and was injured. It was held that he was a workman within the Act.

Another case which should be noticed on this point is *Marrow* v. *Flimby and Broughton Moor Coal and Fire Brick Company, Ltd.* ([1898], 2 Q.B. 588), which was a case under the Employers' Liability Act, 1880. There one E. had entered into a contract with the owners of a colliery to sink a shaft in their mine. By the contract E. (who was therein called the contractor) was to provide such sinkers, etc., as might be necessary for the execution of the work, and was to be paid a certain sum for every fathom sunk. E. employed and paid the sinkers, he himself acting as chargeman in charge of the

Digitized by Google

sinking operations. One of the sinkers, while engaged upon the work, was killed by a block of wood falling upon him, and his administratrix brought an action against the colliery owners, under the Employers' Liability Act, 1880. It was held that the deceased was not a workman who had entered into or worked under a contract of service.

In *Hayden* v. *Dick* (5 F. 150) three workmen were employed to dig out a quarry. They were paid by results, and regulated their own hours of work. It was held that they were independent contractors and were not entitled to compensation.

In *Vamplew* v. *Parkgate Iron and Steel Company* ([1903], 1 K.B. 851) the deceased workman had worked at breaking steel and clearing cinders, and employed five or six men. He himself was paid by tonnage. The county court judge found that he was an independent contractor, and the Court of Appeal refused to disturb his finding.

In *Paterson* v. *Lockhart* (7 F. 954) the deceased was a quarryman who worked on an estate. He was told where to work, but was free to choose which part of the quarry he would start on. The tools were partly his and partly the employer's. It was held that he was a workman.

Partners. In one case an attempt was made, under the Workmen's Compensation Act, 1897, to show that a man who was in fact a partner could be a workman. This was *Ellis* v. *Ellis* ([1905], 1 K.B. 324). There a member of a partnership formed for the purpose of working a mine, by arrangement with his co-partners, worked in the mine as a working foreman and received weekly wages out of the profits of the business. It was held that he was not a workman within the Act.

Apprenticeship. "Where the employer exercises some trade, and it is made a term of the contract that he shall teach as well as employ and remunerate the servant for some specific period, in return for the service rendered

Digitized by Google

the contract amounts to an apprenticeship" (Addison on Contracts, 10th ed., p. 868).

If there is a contract on the part of the servant to learn, but no engagement, express or implied, on the part of the master to teach, there is no contract of apprenticeship (*R.* v. *Shinfield*, 14 East, 541).

Any person who has entered into . . . It is not therefore necessary that the service should have commenced. If, therefore, a workman is injured while on his way to take up a new job, he would be entitled to be compensated, provided that the accident happened in the course of his employment (see *Whitbread* v. *Arnold*, 99 L.T. 103, and cases on sec. 1, supra, pp. 55–61).

Whether by way of manual labour . . . All forms of work do not amount to manual labour. It must be actual toil with the hands. It has therefore been held that a bus conductor is not engaged in manual labour (*Morgan* v. *London General Omnibus Company*, 13 Q.B.D. 832), nor is a tramcar driver (*Cook* v. *North Metropolitan Tramway Company*, 18 Q.B.D. 683).

The two latest cases on this point are *Simpson* v. *Ebbw Vale Steel, Iron, and Coal Co.* ([1905], 1 K.B. 453) and *Bagnall* v. *Levinstein* ([1907], 1 K.B. 531). In *Simpson* v. *Ebbw Vale Steel, Iron, and Coal Co.* the certificated manager of a coal-mine, who was paid a yearly salary and who, although his duties required his presence in the mine, was not required to engage in manual labour, was killed by an accident in the mine. It was held that he was not a workman within the Act.

In *Bagnall* v. *Levinstein* a man who had taken a degree in science entered the employment of a dye and chemical manufacturing company, under a written agreement for five years' service, and upon terms with regard to salary, commission on profits of inventions or improvements in manufacture discovered by him, restrictions as to employment after the termination of his engagement, and disclosure of matters relating to the business of the company and his own researches applic-

Digitized by Google

able to employment as a skilled expert in the business of his employers. His employment involved manual labour on his part. It was held by the Court of Appeal (Collins, M.R., and Cozens-Hardy, L.J.; Farwell, L.J., dissenting) that the governing factor in determining whether the man was a workman was the question what he was employed to do, and that the judge had misdirected himself by not taking into consideration the terms of employment as disclosed in the agreement, and in treating the performance of manual labour in the discharge of his duties as conclusive that the man was a workman within the Workmen's Compensation Act, 1897.

From the cases quoted above it becomes clear that there are very many workmen (in the popular sense) whose employment is neither manual labour nor clerical work. For instance, a bus conductor is neither the one nor the other, and under the Workmen's Compensation Act, 1897, would not have been entitled to compensation. But this Act adds after "manual labour" and "clerical work" the words "or otherwise," which did not occur in the Act of 1897, and we have to consider what is the effect of these words. It is submitted that they are intended to cover every possible kind of work which is done under a contract of service. No doubt it is often the case that words such as "otherwise" or "in any other manner" occurring in a statute refer only to matters cognate to the words which have preceded them. But here it may be said, firstly, that such employments as that of conductors, guards, etc., are cognate to manual labour, or, secondly, that where such widely dissociated ideas as "manual labour" and "clerical work" are put in the same phrase, "otherwise" must include almost everything between them.

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other

Digitized by Google

person to whom or for whose benefit compensation is payable;

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

The corresponding clause in the Workmen's Compensation Act, 1897, was very differently phrased, and this is an improvement on it. "Dependants" was there defined as meaning (in England and Ireland) such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death. The difficulty was this—that it was not clear from this definition whether "family" was used in the sense of relationship or whether it meant people living under the workman's roof. See the discussion on this point in the late Mr. Minton-Senhouse's book, "Accidents to Workmen," 2nd ed., at p. 196. In the present Act "member of the family" is defined in the next clause; and it is clear that it does not make any difference where the people mentioned in that definition dwell, so long as they rely on the workman for their support.

The inclusion of illegitimate children is new and has been criticised on the grounds of public policy—with

Digitized by Google

which this book is not concerned. It should be noticed that the provision with regard to illegitimate children does not apply to collateral relatives.

Wholly or in part dependent. The interpretation of this phrase, which also occurs in the Workmen's Compensation Act, 1897, has given rise to considerable difficulty. The result of the cases appears to be this: that, in spite of numerous attempts, which were at first successful, to set up a standard of living as a rule of law to test whether or not people are "dependent," it has now become settled that it is in each case purely a question of fact for the decision of the arbitrator whether or no the applicant relied wholly or partly on the deceased's earnings for his or her support. The standard of living in the neighbourhood or class to which the family belong is not to be taken into account, but merely the manner in which this particular family actually lived. Notice also that it must be the deceased's earnings which supported them. It is not enough if they lived on his income or capital.

In the case of the applicant being the widow of the workman, there is added to this a legal presumption that she was dependent upon him at the time of his death.

Simmons v. *White* ([1899], 1 Q.B. 1005) is the first case on the subject. There the deceased workman was a boy of fourteen and the applicants were his parents. The boy had been in the habit of giving his wages to his parents, who gave him back a certain amount for pocket money. On these facts it was held that the parents were in part dependent on the boy's earnings. Collins, L.J., in this case said: "It would be hopeless to attempt to lay down any rule of guidance, because every case would probably differ in some material circumstance from almost every other. Thus the financial and social position of the recipient of compensation would have to be taken into account. That which would make one person dependent upon another would in another case merely cause the one to receive benefit from the other. Each case must stand on

Digitized by Google

its own merits and be decided as a question of fact by the arbitrator." It should be noticed that the test suggested in this passage—the financial and social position of the recipient—has not been followed in the later cases. Thus in *Main Colliery* v. *Davies* ([1900], A.C. 358), where the facts were practically the same, part of the headnote is: "Whether there is a dependency is entirely a question of fact in each case, irrespective of the standard of living in the neighbourhood or the class to which the family belong." This is founded on a passage in Lord Halsbury's speech, where he says: "I am unable to see that there is anything in this case beyond a mere question of fact. I decline to assume that the Legislature has contemplated a particular standard . . . a standard dependent upon what was the ordinary course of expenditure in the neighbourhood and in the class in which the man lived. To my mind that is a problem so extremely obscure that I cannot believe that the Legislature intended it to be solved." It is now therefore correct to say that there is no such standard as is suggested in *Simmons* v. *White;* all we have to see in each case is whether the applicant relies for all or part of his support (or the support of his family) on the money which the deceased was earning.

In the next year *Howells* v. *Vivian & Sons* (85 L.T. 529) came before the Court of Appeal. This was also a case of a father seeking compensation for the death of his son. The father was earning full wages and was quite able to support his family without the son's money, for which reason the county court judge declined to make an award; but the Court of Appeal, following *Main Colliery* v. *Davies*, reversed this decision, on the ground that the county court judge had improperly laid down a rule of law which prevented him from considering whether the wages of the deceased were part of the income or means of living of the family, because the whole family could be maintained without those wages.

In *Rees* v. *Penrikyber Navigation Colliery Company* ([1903], 1 K.B. 259) the applicant was a pauper inmate of

Digitized by Google

a workhouse, towards whose maintenance no contribution was, in fact, made by his son, the deceased workman, at the time of his death, although some years previously he had contributed to his support in the workhouse, and at other times had given him money. On these facts it was held that there was no dependency.

Notice also *Barrett* v. *North British Railway* (1 F. 1139), where the mother of a deceased workman, whose parents were partly dependent on him, was held not to be entitled to sue for compensation while the father was alive.

In *Leggett* v. *Burke* (4 F. 693) the applicant was the father of the deceased workman, and it was contended that he was only dependent because he voluntarily supported a crippled brother. The sheriff awarded compensation, and the Court of Session refused to disturb his award.

In *Moyes* v. *Dixon* (7 F. 386) a grown-up daughter kept house for her father, being supported by him, but receiving no payment. Held, that she was a dependant.

Arrol v. *Kelly* (7 F. 906) was a claim by a father. He did not live with his son. Both father and son earned about 30s. a week, but it was proved that the son was in the habit of giving his father about 10s. a week. It was held that the father was not in part dependent on the son.

In *Senior* v. *Fountains and Burnley* ([1907], 2 K.B. 563) a workman at the date of his death was receiving the wages of three of his sons. He supported the sons out of this money and made a profit in so doing. It was held that the widow and younger children were none the less "wholly dependent" on the deceased.

In *Cooper* v. *Fife Coal Company* ([1907], S.C. 564) a workman had supported his granddaughter, the child of his deceased daughter. The child's father and his family had not been heard of for some years. It was held that she was wholly dependent on the grandfather.

The next class of case to be considered is that dealing with the presumption that a wife is dependent on her

Digitized by Google

husband for her support. The first English case on this point is *Coulthard* v. *The Consett Iron Company* ([1905], 2 K.B. 869). The applicant was the widow, and the deceased workman had left her some months previously to the accident causing his death, and from that time until his death he had contributed nothing towards her support, and she had subsisted mainly on charity. On these facts the Court of Appeal upheld the finding of the county court judge that she was dependent on the workman at the time of his death. Collins, M.R., suggested, by comparison with the Scotch cases of *Turner* v. *Whitefield* (6 F. 822); *Cunningham* v. *M'Gregor* (3 F. 775); and *Sneddon* v. *Robert Addie & Sons* (6 F. 992), that the result might have been different if the woman had some other source to look to for support when her husband failed her; it was entirely a question of fact, and in *Turner* v. *Whitefield*, in which the facts were as he suggested (see infra), it had been found as a fact that the woman did not depend on the earnings of the deceased.

The latest case on this point is *Williams* v. *The Ocean Coal Company, Ltd.* ([1907], 2 K.B. 422). There the applicant was the widow, and at the time of the workman's death she was living with her parents and the husband was not, in fact, contributing anything to her support. The county court judge held on these facts that there was no dependency, but the Court of Appeal reversed his decision on the ground that he had ignored the legal presumption that the wife is dependent on the husband (see *Sneddon* v. *Robert Addie & Sons* 6 F. 992), which presumption stands until rebutted by evidence that in fact she is not so dependent. This case also decided, following the rule laid down in *Villar* v. *Gilbey* ([1907], A.C. 139), that a posthumous child is a dependant.

Compare this case with *Turner* v. *Whitefield* (6 F. 822), where a woman had lived apart from her husband for fourteen years and was supported by her illegitimate son. It was held that she was not dependent on her husband.

Digitized by Google

In *Baird* v. *Birsztan* (8 F. 438) a Pole had come to Scotland to seek employment, leaving his wife in Poland. He obtained employment as a miner, and shortly afterwards was killed. He had sent his wife one small sum of £1. She also earned a trifle and received gifts from her father. It was held that she was partly dependent upon him.

See also the Irish case of *Queen* v. *Clarke* ([1906], 2 I.R. 135).

Actio personalis moritur cum persona. There has been some difference of opinion as to whether this rule applies if the sole dependant dies after commencing proceedings. In *O'Donovan* v. *Cameron* ([1901], 2 I.R. 633), where the sole dependant died before making her claim and the proceedings were continued by the personal representative of the deceased workman, it was held that the common law rule applied and that the right to be compensated was gone. However, in the recent case of *Darlington* v. *Roscoe & Sons* ([1907], 1 K.B. 219) the Court of Appeal held that the rule did not apply, inasmuch as the proceedings were not founded in a tort. The facts of this case are not quite the same as those in *O'Donovan* v. *Cameron*, for here the dependant had made a claim before his death; and Collins, M.R., founded his judgment on the fact that as soon as a claim has been made there is a right to be paid a certain sum as compensation, which has only to be fixed by the arbitration. There is no action on foot which can die.

Or would but for the incapacity, etc. The insertion of this phrase, which does not occur in the Workmen's Compensation Act, 1897, is an improvement. For in the case of death following a long illness brought on by an accident it would seldom happen that the applicants could be dependent on the deceased at the time of his death, for his earnings would cease at the time of the accident.

Illegitimate children. An unsuccessful attempt was made in *Clement* v. *Bell & Sons* (1 F. 924) to show

Digitized by Google

that an illegitimate child was a "dependant" within the Workmen's Compensation Act, 1897. Compare this with *Dickinson* v. *North-Eastern Railway Company* (2 H. & C. 735), which was an action brought under Lord Campbell's Act in which the plaintiff was the illegitimate child of the deceased. And see *Schofield* v. *The Orrell Colliery* (25 T.L.R. 106).

Total and partial dependants. It had been held in *Fagan* v. *Murdoch* (1 F. 1179), a decision under the old Act, that where a person totally dependent exists, partial dependants were not entitled to any compensation, but the effect of that decision is got rid of by Sched. I. para. 8. As to the method of assessing the compensation to be paid to a partial dependant, see *Osmond* v. *Campbell and Harrison* ([1905], 2 K.B. 852), infra, p. 194.

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

Under the Workmen's Compensation Act, 1897, only people entitled to sue under Lord Campbell's Act could be dependants—*i.e.*, husband, wife, parents, child, grandparents, grandchildren, step-parents, step-children. This Act extends the class by including brothers, sisters, half-brothers, and half-sisters.

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

See note on sec. 7, ante, p. 133.

"Manager," in relation to a ship, means the

Digitized by Google

ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

"Out worker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

This is a very complicated definition, and is very much narrower than the popular idea of an out worker, which would include every one who did work in his own home in pursuance of a contract of service.

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority;

The effect of this is that people employed casually by the local authority would not be within the exception in the definition of "workman," supra, p. 166, and might therefore recover compensation if injured. So a man casually employed by a borough council to sweep snow would be within the Act.

"County court," "judge of the county court,"

Digitized by Google

"registrar of the county court," "plaintiff," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer and act of sederunt.

Digitized by Google

SECTION XIV

Sec. 14. In Scotland, where a workman raises an action against his employer independently of this Act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the Sheriff Court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that Court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the Second Schedule to this Act in regard to an appeal from the decision of the Sheriff on any question of law determined by him as arbitrator under this Act shall apply.

This section refers to sec. 6, subsec. 3, of the Employers' Liability Act, 1880, sub-subsec. 3: "In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, sec. 9 of the Sheriff Courts (Scotland) Act, 1877."

This latter Act provides a procedure for appealing from the Sheriff Court.

See note on Sched. II. sec. 4, p. 238 infra.

Digitized by Google

SECTION XV

1. ANY contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act. Sec. 15, subsec. 1.

The effect of this section is that the commencement of this Act operates as a notice to determine the contract; and the length of notice required is to be the same as would be required to determine the particular contract of service. Therefore, for example, in the case of a domestic servant, who can be dismissed by a month's notice, such a contract would automatically terminate one month after the Act came into force.

It should be noticed that this section only refers to contracts whereby the workman relinquishes his right to be compensated, and therefore contracts excluding the Employers' Liability Act, 1880, or the common law are not affected by it.

Digitized by Google

This section is almost identical with the corresponding one in the Workmen's Compensation Act, 1897, and has the effect of absolutely preventing contracting out except in accordance with sec. 3 (supra, p. 104); but during the notice period any such existing contracts would remain alive. Such contracts were not likely to be in existence at the time of the commencement of this Act in any trade to which the Workmen's Compensation Act, 1897, applied; but in other trades contracts may have existed, intended to exclude the Employers' Liability Act, 1880, and the common law, but sufficiently wide to cover this Act, and in such cases this section would apply.

Subsec. 2. 2. Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.

Subsec. 3. 3. The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

Subsec. 4. 4. If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.

As to the requirements of the Registrar before certifying a scheme under this Act, see notes on sec. 3, supra, p. 104.

An old scheme would have to be altered in the following particulars:—

(i) The benefits under it must be actually as great to each man as those he would be entitled to under this Act. Under the Workmen's Compensation Act,

Digitized by Google

1897, they had only to be as great "on the whole" (see p. 106).

(ii) Serious or wilful misconduct must not be a bar to the recovery of compensation, if it results in death or serious injury.

(iii) The provisions as to giving notice must not be so stringent as under the Workmen's Compensation Act, 1897.

(iv) The duration of the disability need not be so long.

(v) "Young persons" must be dealt with on a different footing.

(vi) The class of "dependants" must include various relatives who were not included in the earlier Act.

Schemes under the old Act were permitted by subsec. 4 to continue in force for six months after the commencement of the Act, but were only binding on workmen who had joined them during the currency of the old Act. In *Wallace* v. *Hawthorne* ([1908], S.C. 713) a workman had entered upon his service in August, 1907, and had then joined a scheme which had been certified under the old Act. Before the scheme was re-certified under this Act the workman was injured. It was held that he was not bound by the scheme and could recover compensation.

Digitized by Google

Sec. 16.

16. 1. THIS Act shall come into operation on the first day of July, 1907, but, except so far as it relates to references to medical referees and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act.

2. The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply in cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases.

Sec. 17.

17. This Act may be cited as the Workmen's Compensation Act, 1906.

Digitized by Google

SCHEDULE I

(1) THE amount of compensation under this Act shall be— Sched. I. (1).

This paragraph, with the exception of the two provisos, is very nearly the same as the corresponding one in the Workmen's Compensation Act, 1897. It should be borne in mind that the paragraph only deals with the amount of compensation, and has nothing to do with the right to be compensated.

The question is dealt with by dividing it into two branches, (*a*) where death ensues, and (*b*) where it does not.

(*a*) Where death results from the injury—

This division is again subdivided into three subsections—(i) where the deceased leaves total dependants; (ii) where the deceased leaves partial dependants; (iii) where the deceased leaves no dependants. These three subdivisions will now be dealt with in order.

(i) If the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is

Digitized by Google

the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

Therefore if the workman leaves any total dependants, the amount they are entitled to is fixed as follows:—

(i) If he has been in the employment for three years or more, then a sum equal to three years' earnings or £150, whichever is greater; but in no case more than £300.

(ii) If he has been in the employment less than three years, then a sum equal to 156 times his average weekly earnings or £150, whichever is greater; but in no case more than £300.

Where death results from the injury. It sometimes happens that prior to his death the workman has been in receipt of weekly payments. It has been held in *O'Keefe* v. *Lovatt* (18 T.L.R. 57) that this circumstance does not extinguish the rights of the dependants.

Employment of the same employer. See note on next section, p. 208.

Wholly dependent. It had been held in Scotland in *Fagan* v. *Murdoch* (1 F. 1179) that under the old Act if there is a total dependant in existence, the partial dependants have no right to be compensated, even if the total dependant, in fact, makes no claim. But this Act

Digitized by Google

expressly alters this (see Sched. I. para. 8, infra, p. 215).

It should be noticed that the question of whether or not a person is dependent on the deceased's earnings is not affected by the fact that he has inherited money from the deceased or in any other way has benefited by the death. This is the result of the decision in *Pryce* v. *Penrikyber Navigation Colliery Company* ([1902], 1 K.B. 221). There the workman had saved a sum of money, to which the widow became entitled on his death. It was held that this did not prevent her being "wholly dependent" on his earnings.

If a dependant dies after making a claim, his right passes to his legal personal representative (*Darlington* v. *Roscoe* [1907], 1 K.B. 219, supra, p. 182).

Notice also that the dependants are entitled to compensation on the death scale if death in fact results from the injury, although at the time of the injury such a result could not have been anticipated (*Dunham* v. *Clare* [1902], 2 K.B. 292). And thus where a workman went mad as a result of the accident and committed suicide, it was held that the case was within the Act (*Malone* v. *Cayzer, Irvine & Co.* ([1908], S.C. 479).

In *Leonard* v. *Baird* (3 F. 890) the workman was killed before he had earned anything. The minimum amount of £150 was awarded. See also *Doyle* v. *Beattie* (2 F. 1166); *Forrester* v. *M'Callum* (3 F. 650); and *Russell* v. *M'Cluskey* (2 F. 1312).

Earnings. See note on sec. 2, p. 198.

Provided that . . . from such sum. The words "and any lump sum paid in redemption" were not in the Workmen's Compensation Act, 1897. But it is submitted that the effect would be the same if they had been left out; for such a lump sum is, in fact, a series of weekly payments commuted into a single sum of money. See also *O'Keefe* v. *Lovatt* (18 T.L.R. 57, supra).

Average weekly earnings. The manner of arriving at this sum is deal with in the next paragraph, *q.v.*, p. 198.

Digitized by Google

(ii) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants;

If a workman leaves persons partly dependent on him, they are entitled to compensation, the *maximum* amount of which is the same as is provided for in the case of total dependants. There is no *minimum* fixed, and in default of agreement the arbitrator has to give a sum proportionate to the loss sustained—*i.e.*, proportionate to that part of the deceased's earnings which were devoted to the support of the particular dependant. The word "proportionate" would therefore seem to be used here in two senses; *i.e.* (i) the sum awarded must bear some proportion to the dependant's monetary loss, and (ii) as between all the partial dependants, the sum awarded to each must be proportionate to the amount of loss he has sustained as compared with the others.

As to what considerations should weigh with the arbitrator in awarding compensation to partial dependants, see *Osmond* v. *Campbell and Harrison* ([1905], 2 K.B. 852). There the widow of a deceased workman earned a small sum, and the county court judge therefore decided that she was only partially dependent, and deducted £5 from the compensation. It was contended in the Court of Appeal that in the case of a partial dependant only such sum as was proportionate to the loss could be awarded, and that therefore the judge should have taken into consideration the cost of maintaining the workman. But it was held that the only difference between the cases of a total and a partial dependant was

Digitized by Google

that the other sources of income had to be taken into consideration, and, therefore, that the county court judge was right.

In part dependent. Whether or not the dependency is total or partial is a question of fact to be determined by the arbitrator in each case (see *Baird* v. *Birsztan*, 8 F. 438). It was held in Scotland under the old Act that if there are any total dependants in existence, the partial dependants cannot get anything (see *Fagan* v. *Murdoch*, 1 F. 1179, supra). But this Act expressly alters this (see Sched. II. para. 8, p. 215).

Reasonable. In *Bevan* v. *Crawshay* ([1902], 1 K.B. 25) it has been held that in assessing the compensation payable to partial dependants, the expenses of the deceased's funeral may be taken into consideration. This was followed in Scotland in *Hughes* v. *Summerlee and Mossend Iron and Steel Company* (5 F. 784).

And—

(iii) If he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

The proper person to claim this sum is the executor or administrator; but in certain cases a creditor may make the claim. See p. 214.

(*b*) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding 50 per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound;

Digitized by Google

Where the workman is not killed but only incapacitated by the accident, he is entitled to a weekly sum to be paid to him during the time he is incapacitated. The *maximum* amount he can so receive is 50 per cent. of his average weekly earnings or £1 per week, whichever sum is the less. If he has been in the employment for twelve months, he may get 50 per cent. of his average weekly earnings during the twelve months preceding the injury. If he has been in the employment for less than twelve months, then 50 per cent. of his average weekly earnings during the whole time he has been employed. As to what are "average weekly earnings," see the note on sec. 2, infra, p. 198.

In the case of partial incapacity the arbitrator may give the full difference between the earnings before and after the accident, provided that such amount does not exceed 50 per cent. of the previous earnings or £1 per week. So that if previous to the injury the earnings are 30/-, and afterwards are £1 a week, 10/- a week may be awarded as compensation, not merely 5/-. See *Geary* v. *Dixon* (4 F. 1143); *Parker* v. *Dixon* (4 F. 1147); *Corbet* v. *Glasgow Iron and Steel Company* (5 F. 782).

It was held in *Jamieson* v. *Fife Coal Company* (5 F. 958) that the arbitrator may not make the workman's age and a general fall in wages reasons for giving less than half the weekly earnings.

In *Bryson* v. *Dunn and Stephen* (8 F. 226) the workman had earned 36/8 per week. He was totally incapacitated and was awarded 18/4 per week. Later, he partially recovered and was taken back by his employer at 17/- a week. On an application to review his award, the Sheriff refused to make any alteration, and his decision was upheld by the Court of Session.

This part (*b*) of this paragraph only differs from the corresponding paragraph of the Workmen's Compensation Act, 1897, in that the words "after the second week" are omitted. Under this Act the weekly payments must be made from the date of the injury, except in the case provided for in the next proviso.

Digitized by Google

Incapacity. The incapacity must result from the injury, and whether it does so or not is a question of fact. Thus where a man had dislocated his shoulder and had been told by a surgeon to follow a certain course of treatment and failed to do so, whereby his injury was prolonged, the Court of Appeal refused to disturb a finding of the county court judge that the incapacity was due to the injury (*Smith* v. *Cord Taton Company*, the *Times*, Feb. 6, 1900).

Further, an injured man is not obliged to undergo a surgical operation which is attended with danger in order to be rid of the incapacity (*Rothwell* v. *Davies*, 19 T.L.R. 423; and *Sweeney* v. *Pumpherston Oil Company*, 5 F. 972). *Sed aliter* where the operation was a simple one and such as a reasonable man would, for his own comfort, elect to undergo (*Anderson* v. *Baird*, 5 F. 373).

Provided that—

(*a*) If the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week;

This proviso is new and is rendered necessary by the change in the substantive part of the Act. Under the Workmen's Compensation Act, 1897, unless the workman was disabled for two weeks he had no claim. Under this Act he has a claim if the disablement lasts for a week. This proviso says that if the disablement lasts less than two weeks there shall be no payment in respect of the first week. This works out thus: If the disability lasts only a few days, less than a week, the case is not within the Act, and no compensation is payable. If it lasts, say, ten days, compensation is only payable for three days, for the first week does not count. If it lasts fourteen days or more, compensation is payable for the whole period.

Digitized by Google

And—

(*b*) As respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, 100 per cent. shall be substituted for 50 per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.

This proviso meets the case of a boy who, if his injury lasted a long time, would not be properly compensated by receiving half his weekly earnings. For instance, if he were injured at the age of 16, when earning 10/- a week, but for this proviso he would only get 5/- a week, although, as the years went on, his wage-earning capacity would probably have increased. This proviso is a rough and ready method of meeting this difficulty. The effect of it is that if the boy be earning less than 20/- a week, he shall receive his full wages as compensation, subject to a maximum sum of 10/- a week. Compare this proviso with para. 16 of this schedule.

Sched. I. (2). (2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

(*a*) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the em-

Digitized by Google

ployment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(*b*) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(*c*) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(*d*) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

Digitized by Google

The whole of this paragraph is new and is inserted to end the confusion which had been brought about by the various decisions under the Workmen's Compensation Act, 1897, as to the meaning of "earnings" and "average weekly earnings." Each of the four subsections, *a*, *b*, *c*, and *d*, deal with different points which have arisen, and it is necessary to consider the earlier decisions before this paragraph can be properly understood.

(1) *The first point* arose in cases where the accident occurred in the first week of the workman's employment. Where the workman had been working for less than a week it was felt to be a straining of language to say that he had any "average weekly earnings" at all. This point was first argued in *Lysons* v. *Knowles* ([1901], A.C. 79), where it was contended, successfully in the Court of Appeal, that a workman who had worked for a few days only could not have an average weekly wage at all, and was therefore not entitled to any compensation. The House of Lords did not expressly deal with this point, but they made an award of compensation at the rate of 50 per cent. of what the workman had actually earned while working. The later decisions, however, suggest that what is to be looked to is not the amount actually earned in the few days, but that amount plus what the workman would have earned in the rest of the week but for the accident (see *Ayres* v. *Buckeridge*, *Wheale* v. *Rhymney Iron Company*, and *Jones* v. *Rhymney Iron Company*, reported together at [1902] 1 K.B. 57). But these cases were not followed in Scotland (see *Grewar* v. *Caledonian Railway*, 4 F. 895, and *M'Cue* v. *Barclay*, 4 F. 909).

In *Bartlett* v. *Tutton & Sons* ([1902], 1 K.B. 72) the workman had only been employed a few hours when injured. His pay was 6d. an hour, and he could be dismissed at any moment. It was held by the Court of Appeal that half what he earned or would have earned was the standard. And as there was no amount which he would have earned, only a trifling sum was awarded.

Digitized by Google

It was there expressly laid down that the test was not what other people in the same or similar employment could earn, and that the arbitrator was not entitled to take any such matter into consideration. The only question was what the workman himself would earn, and in the absence of evidence the arbitrator must decide that as best he could.

In accordance with this principle was the decision in *Giles* v. *Belford Smith & Co.* ([1903], 1 K.B. 843). There a dock labourer was employed from time to time, and was, in fact, continuously employed for three weeks before the accident at exceptionally high wages for overtime. It was held that these three weeks were the basis; and that it was nothing to the point that the sum earned was far above the average of workmen in the applicant's grade of employment.

In *Nelson* v. *Kerr and Mitchell* (3 F. 893) the workman had worked for one week, earning 16/2, and had worked for only a few hours in the second week, earning nothing at all, when he was injured. It was held that his average weekly earnings were 16/2 (see also *Cadzow Coal Company* v. *Gaffney*, 3 F. 72; *Peacock* v. *Niddrie and Benhar Coal Company*, 4 F. 443, *James* v. *Ocean Coal Company* [1904], 2 K.B. 213).

Where the custom of a trade is to reckon the work as starting from some particular day, such trade weeks were recognised (*Fleming* v. *Lochgelly Iron and Coal Company*, 4 F. 890, and *Campbell* v. *Fife Coal Company* 5 F. 170). In *Case* v. *Colonial Wharves* (53 W.R. 514) it was held that there was no presumption that a casual labourer employed by the hour would continue in the employment for more than an hour. Therefore if he were injured after working only part of a week, his earnings up to the time of the accident were his average weekly earnings.

On the other hand, in *Brown* v. *Cunningham* (6 F. 997), where a workman had worked for one week at a fixed wage and was then discharged, it was held that the fixed weekly wage was his average weekly earnings.

Digitized by Google

(2) *The second point* arose in cases where the workman was working for a number of different employers at the same time under concurrent contracts. It was decided in *Hathaway* v. *Argus Company* ([1901], 1 Q.B. 96) that in such a case the arbitrator could only look to the workman's earnings in the employment in which he was injured.

(3) *The third point is this*—in order to constitute average weekly wages the money must all be earned under one contract, and, therefore, if there is a break in the employment it is important to decide whether the contract was ended or not; for the time to be looked to is the period of continuous employment immediately preceding the accident. There are a number of cases in which the Court has had to decide whether there was or was not a break in the continuity of the employment. The first of these is *Keast* v. *Barrow Hæmatite Steel Company* (15 T.L.R. 141). There it was held that a holiday intervening did not break the continuity. In that case the effect of the holiday was to include in the total time a period in which nothing was earned, and the average was to that extent reduced.

If a man went out on strike he broke the continuity of his employment (*Jones* v. *Ocean Coal Company* [1899], 2 Q.B. 124). Similarly there was a break if there was a prolonged absence (in that case eleven months) through illness (*Appleby* v. *Horseley* [1899], 2 Q.B. 521). In *Hewlett* v. *Hepburn* (16 T.L.R. 56) the duration of the absence was eleven weeks and the arbitrator found there was a break, and the Court of Appeal upheld his finding.

In *Williams* v. *Poulson* (16 T.L.R. 42) a casual labourer had worked for the employer a few days each week and on the other days had worked for other employers. It was held that there was no break in the employment. And in *Hunter* v. *Baird* (7 F. 304) a miner was dismissed on October 7th. He had worked under a contractor. On October 9th he got employment from the coalmaster in the same mine. On October 12th he was injured. It was held that in estimating his

Digitized by Google

average weekly earnings the earnings under the contractor could not be taken into account. See also *Gibbs* v. *Dunlop* (4 F. 971).

(4) *The fourth point was this*—how were you to find out what the average weekly earnings were if the workman had been employed at several different grades during the twelve months preceding the accident? In *Price* v. *Marsden* ([1899], 1 Q.B. 493) it was held that the proper method was to divide the total amount of earnings by the number of weeks, and that it made no difference that the wages and the nature of the work had been altered during the period.

(5) *The fifth point was this*—what manner of gains is included under the word "earnings"? The first case on this was *Pomphrey* v. *Southwark Press* ([1901], 1 K.B. 86), where the Court of Appeal held that the value of the tuition given under an apprenticeship deed could not be taken into consideration in fixing the earnings. Stirling, L.J., suggested that such things as board, lodgings, and clothes probably would be earnings.

In *Houghton v. Sutton Heath and Lea Green Collieries Company, Ltd.* ([1901], 1 Q.B. 93), by the rules of a colliery sixpence a week was deducted from wages for lamp oil supplied by the employers. It was held that the county court judge was right in taking as the basis of his award the full weekly wages of the workman without regard to the weekly deduction; and the decision of the House of Lords in *Abram* v. *Southern* ([1903], A.C. 306) was to the same effect.

In *Great Northern Railway Company* v. *Dawson* ([1905], 1 K.B. 331) the question put by Stirling, L.J., in *Pomphrey* v. *Southwark Press* (supra) came up for decision. A guard in the railway company's service had the use of his uniform, the property in which remained with the employers. It was held that the value of this uniform was rightly taken into consideration in determining his wages. And *Dothie* v. *Macandrew* ([1908], 1 K.B. 803), a recent case under the present Act, is in accordance with

Digitized by Google

this. In that case the Court had to decide whether the remuneration of the captain of a ship was under £250 per annum, so as to make him a "workman" within sec. 13, and it was held that the value of his board while at sea must be taken into consideration (see supra, p. 168). In *Midland Railway Company* v. *Sharpe* ([1904], A.C. 349) the House of Lords decided that money given to a guard to get lodgings with was part of his earnings.

There are therefore five distinct points as to the meaning of "average weekly earnings."

(i) How is the average to be determined where the period of employment is too short for a true average to be taken?

(ii) Where the workman has entered into concurrent contracts with different employers are you to look to his earnings in the service of all the employers or merely of the one who is liable?

(iii) and (iv) Where there has been an interruption of the work or a change of grade how is the average to be determined?

(v) Where the workman has received in addition to his wages a sum of money for other purposes is this to be included?

Clauses *a*, *b*, *c*, and *d* of this paragraph deal with these points *seriatim*, clause *c* dealing with both (iii) and (iv).

Clause (*a*) deals with the first point and enacts that where, owing either to the shortness of the period, the casual nature of the work, or the terms of the employment, it is impossible to find the "average weekly earnings," you may look to what other workmen in the same grade and in the service of the same employer are earning, or failing any such, to what is earned by workmen in the employment of other employers in the same district. That is to say, it enacts exactly what the Court of Appeal in *Bartlett* v. *Tutton* ([1902], 1 K.B. 72), supra, said was not the law, and directs the arbitrator to have regard to what may be called the standard of the trade.

The meaning of this paragraph has recently been con-

Digitized by Google

sidered by the Court of Appeal in the case of *Perry* v. *Wright* ([1908], 1 K.B. 441) and the three other cases reported with it. It was there held that in estimating the average weekly earnings under para. 2 (*a*) the object should be to arrive at the normal rate of remuneration of the injured man at the date of the accident; and where exact computation is impracticable the Court for its guidance may have regard to the average weekly amount earned during the previous twelve months by a person in the same grade employed by the same employer, or, failing that, in the same class of employment in the same district.

It was also held that in the ordinary case the "average weekly earnings" are to be calculated by dividing the total earnings of the workman during the relevant period, not by the number of weeks in that period, but by the number of weeks actually worked within that period; days in which no work is done and no wages are earned are to be disregarded. But this principle does not apply to cases under para. 1 (*a*) (i) (*i.e.*, where a deceased workman had actually been employed by the same employer for upwards of three years). And neither does the principle apply where the limitation upon the time worked arises from the nature of the employment itself—*e.g.*, the case of a charwoman, where a certain amount of discontinuity is an incident of the employment.

The meaning of the paragraph is explained by Cozens-Hardy, M.R., at p. 450: "Sect. 2 contemplates circumstances which, though not uncommon, may be deemed out of the ordinary course. It lays down certain rules which must be observed wherever 'earnings' or 'average weekly earnings' occurs in the schedule. The dominant principle is to be found in the first sentence of clause (*a*) — 'Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated.' This can scarcely be confined to one date, namely, the date of the accident; for, under sec. 1 (*a*) and (*b*), it is clear that

Digitized by Google

other dates cannot be disregarded. Then follows a proviso which contemplates that there may be cases in which computation is impracticable. No mandatory words are here used; the phrase is simply 'regard may be had.' The sentence is not grammatical, but I think the meaning is this: Where you cannot compute you must estimate, as well as you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases." See also *Anslow* v. *Cannock Chase*, the *Times*, December 12, 1908.

The meaning of the word "grade" in clauses (*a*) and (*c*) of this paragraph was also considered in this case; it was held that "grade" refers to the particular rank in the industrial hierarchy occupied by the workman, and not to his greater or lesser excellence in that rank; but that the Court, having found that the workman has a grade, is not bound to adopt the average wages in that grade as the basis of compensation, but may take into consideration the personal capacity of the workman.

In that case the applicant was a casual dock labourer, and the county court judge found that it was impracticable to compute his rate of remuneration. He also found that among dock labourers there were "no definite grades," but that the men formed themselves into grades of good and bad, the former earning on an average 30s. a week and the latter about 15s. a week. He also found that the applicant did not stick to his work, and ought to be placed in the grade of a bad workman, and awarded compensation on the basis of 15s. a week. The Court of Appeal reversed this decision. Cozens-Hardy, M.R., said (at p. 451): "I am not aware that the word 'grade' in this connection has ever been interpreted. I think it refers to the particular rank in the industrial hierarchy occupied by the workman . . . and not to his greater or less excellence in that rank. It is a question of fact whether there is any 'grade' to which the workman belongs, and it is likewise a question

Digitized by Google

of fact what is the average weekly amount in any particular grade. If there is no grade, an estimate must nevertheless be made. . . . Having found that the man has a particular grade, and what are the average wages in that grade, there is no obligation to adopt those average wages as the basis of compensation. The personal element then comes in. It will be open to consider whether the individual workman is an average man or is above or below an average man." And later (at p. 453) his lordship says : "I think the learned county court judge has misdirected himself as to the meaning of the word 'grade.' That word does not involve or depend upon individual characteristics. Each grade may, and indeed must, have good and bad members. The good and the bad are not two grades. I think the case must go back to the learned county court judge to decide whether casual dock labourers form a distinct grade in the hierarchy of labour, and, if so, what are the average earnings in that grade. He may have regard to those average earnings, but he will not be bound to take those average earnings as the basis of his award."

The other points raised in these cases are considered in the note on clause (*c*) of this paragraph, infra.

Clause (*b*) is also new law. Under the old Act it was only the amount earned from the particular employer who was respondent which could be considered. This worked hardly on men who, like printers, were in the habit of working for a different employer each night of the week, for it might be only a fraction of their total weekly earnings which could be taken into consideration. This overrules the decision in *Hathaway* v. *Argus Company* ([1901], 1 Q.B. 96). It should be noticed that this subsection does not extend to casual work done for other employers, but only applies where there are concurrent contracts.

Clause (*c*) deals with two points. Firstly, it enacts that only work done in the grade in which the workman was placed at the time of the accident is to be considered.

Digitized by Google

It thus overrules the decision in *Price* v. *Marsden* ([1899], 1 Q.B. 493, supra). It further enacts that "employment by the same employer" means "employment by the same employer uninterrupted by illness or other unavoidable cause." Therefore the commencement of the period to be looked to is the occasion on which the workman last resumed work prior to his accident.

The meaning of "employment by the same employer" was considered in *Perry* v. *Wright*, etc. ([1908], 1 K.B. 441, supra). It was there held that in determining whether there has been any change of employment, "employment by the same employer" for the purposes of this schedule means employment in the same grade, and any step up or down from one grade to another is to be regarded as constituting a fresh employment; but in calculating any of the periods mentioned in para. 1 of the schedule, absence due to illness or to causes beyond the control of the workman is to be disregarded, and the employment is to be reckoned as continuous.

Clause (*d*) enacts that money given to a workman to enable him to meet expenses is not to be counted as part of his earnings. This overrules *Midland Railway Company* v. *Sharpe* ([1904], A.C. 349), supra, but does not deal with other sums which the workman receives besides his wages, such as tips (see *Penn* v. *Spiers* [1908], 1 K.B. 766), or compensation for a previous injury (see *Perry* v. *Wright* [1908], 1 K.B. 441, supra).

This section thus puts to rest the great majority of the points which have arisen on the words "average weekly earnings," the only question left open being the one discussed in *Pomphrey* v. *Southwark Press* ([1901], 1 K.B. 86, supra), as to what other things besides money are to be counted as earnings, which forms a part of the fifth point above. On this last point there have already been four decisions under the present Act. In *Dothie* v. *Macandrew* ([1908] 1 K.B. 803) it was held that the board given to the captain of a ship while at sea formed part of his "remuneration" for the purpose of deciding

Digitized by Google

whether he was earning less than £250 per annum (see sec. 13, p. 168). In *Penn* v. *Spiers* ([1908], 1 K.B. 766), the Court of Appeal held that tips received by a waiter may be taken into account in fixing his average weekly earnings — subject only to this, that earnings would not include tips which (*a*) are illicit or (*b*) involve or encourage a neglect or breach of duty on the part of the recipient to his employer, or (*c*) are casual and sporadic and trivial in amount (see per Cozens-Hardy, M.R., at p. 770).

In *Perry* v. *Wright* ([1908], 1 K.B. 441, supra) a workman received an injury which partially incapacitated him, and afterwards accepted light employment from his old employers, receiving a small amount as wages and also a weekly payment as compensation. He was then killed by a second accident. It was held that the amount of the weekly payments of compensation could not be taken into account in fixing his "average weekly earnings."

In *Rosengvist* v. *Bowring* ([1908], 2 K.B. 109) a seaman who served on an ocean-going ship received 21s. a week in addition to his board and lodging. It was held by the Court of Appeal that in calculating the value of the board and lodging so as to arrive at his average weekly earnings, the cost to the shipowners was the test, and not what it would have cost the workman to keep himself on shore.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the Sched. I. (3).

Digitized by Google

average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

This paragraph is differently expressed from the corresponding one in the Workmen's Compensation Act, 1897. It deals with two distinct points. Firstly, it directs the arbitrator to take into consideration any sums other than compensation which the workman may have received from the employer during the incapacity. It is submitted that "regard shall be had" means that the arbitrator is to consider these points in exercising his discretion. It cannot mean that he is obliged to subtract the whole amount of any such payments from the compensation. This view is in accordance with the decisions under the old Act, which show that within the prescribed limits the amount of the compensation is within the discretion of the arbitrator (see *Osmond* v. *Campbell and Harrison* [1905], 2 K.B. 852; *Ellis* v. *Knott*, the *Times*, April 9, 1900; and *Powell* v. *Edwards*, the *Times*, July 23, 1900).

If the employer retains his workman at the same wages after the accident, although he is not able to do the same work, the workman suffers no immediate pecuniary loss from the accident; but should the employer later on dismiss him, he would be unable to obtain equally remunerative work. In such a case he is entitled to an award for a nominal amount (see *Chandler* v. *Smith* [1899], 2 Q.B. 506), and he can apply to have the award reviewed if at a later period his wage-earning capacity is lessened in the way suggested (see the note on para. 16 of this schedule). This provision will probably be frequently resorted to in the case of domestic servants.

The arbitrator is obliged to exercise his discretion in each case that comes before him; and it was accordingly held by the House of Lords in *Webster* v. *Sharp* ([1905],

Digitized by Google

A.C. 284), that a rule, the practice of a Court, to award the full amount in the absence of special circumstances was bad.

The second part of this paragraph only applies in cases where the incapacity is partial. In such cases the workman would probably be able to earn something after the accident, and the paragraph directs that he is in no case to receive more compensation than the difference between his former "average weekly earnings" and the amount he is earning or is able to earn after the accident. This provision was necessary to get over the effect of *Wilson* v. *Jackson* (7 W.C.C. 122) where the Court of Appeal held that the employer was not entitled to have the payments stopped, although the workman was then earning more than before the accident.

It should be noticed that the workman can receive the full amount of this difference and not merely 50 per cent. of it. Thus if his average weekly earnings were £2, and after the accident he earns £1 10s. per week, the maximum amount he can receive is 10s. per week, not merely 5s. This is the meaning of this section, and it is also the interpretation put upon the corresponding section of the old Act in *Illingworth* v. *Walmsley* (16 T.L.R. 281). Thus in the case put the arbitrator would take 10s. a week as the maximum, and would then award such sum "as under the circumstances of the case may appear proper," which in the absence of special circumstances would no doubt usually be the maximum amount.

The words "*able to earn*" occurred also in the old Act and gave rise to some difference of opinion. It was decided in *Clark* v. *The Gas Light and Coke Company* (21 T.L.R. 184) that the expression means not merely physically able to earn, but able to obtain the means of earning. In that case the injured man had recovered his health, but in spite of his best efforts had been unable to obtain a fresh situation, and it was held that he was not "able to earn" and was therefore entitled to compensation. As these words have been retained in this

Digitized by Google

Act after considerable discussion in committee, it is apparently intended that the rule laid down in Clark's case shall remain the law.

It is hardly necessary to point out that "able to earn" and "willing to earn" are not the same thing, and therefore the workman would have to show that he had used his best efforts to obtain work in "some suitable employment or business."

Sched. I. (4). (4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

This paragraph is almost identical with the corresponding one in the old Act. If proceedings are on foot and the workman refuses to submit to an examination, the employer can apply for a stay of proceedings (see Rule 55, p. 307).

Where a workman has given notice, etc. In *Osborn* v. *Vickers* ([1900], 2 Q.B. 91) the workman had given no notice of the accident, but the employer had waived any defence he might have acquired by the absence of notice. The workman relied on the absence of notice as a reason why this section should not apply, but the Court of Appeal overruled this contention. If therefore arbitration proceedings are on foot, the workman is obliged to submit to an examination, whether or not he has given notice of his accident.

. *Duly qualified medical practitioner* is a person registered under the Medical Act, 1858.

Digitized by Google

In any way obstructs. There are two Scotch cases as to what amounts to an obstruction. In *Finnie & Son* v. *Duncan* (7 F. 254) the workman after giving notice of the accident had gone to Australia. It was held that this amounted to an "obstruction of the medical examination," and entitled the employer to a stay.

In *Baird* v. *Kane* (7 F. 461) the workman had twice submitted to an examination and had then gone to live in Dublin. The employer then requested him to return to Glasgow for a further examination, but he refused to do so and offered to submit himself to examination in Dublin. It was held that this did not amount to an obstruction (see also *Strannigan* v. *Baird*, 6 F. 784).

It has been held that although the workman is bound to submit himself to examination by a medical practitioner, he need not submit to examination by a medical referee; that is optional (*Edwards* v. *Guest, Keen, and Nettlefold* [1904], 1 K.B. 339, and see *Niddrie and Benhar Coal Company* v. *M'Kay*, 5 F. 1121, disapproving *Davidson* v. *Summerlee and Mossend Iron Company*, 5 F. 991).

Shall be suspended. This should be read in conjunction with sec. 20 of this schedule. If at a later period the suspension is ended and compensation is awarded, nothing can be given in respect of the period of suspension.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in: Sched. I. (5).

Digitized by Google

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

This is quite new law. Under the old Act, the payment was made to the person entitled, although by consent the course of paying the money into court was often adopted.

It has been regretted by some critics of the Act that this paragraph should only be applicable in the case of death; and it has been urged that most valuable statistical records would be obtained if payment into court were compulsory in all cases. But, looked at from the point of view of the workman or dependants, the positions in the cases of death and incapacity are very different. If a sum of several hundred pounds is paid to the family of a workman, there is a very grave danger that the money may be unwisely spent. Such an objection does not apply in the case of a few shillings a week being paid during incapacity; and it is probably for this reason that the distinction has been drawn by the Legislature.

In the case of the workman leaving no dependants the maximum amount of compensation payable is £10, and that is only for the medical and funeral expenses; so there can be no objection to the payment being made direct to the person who has had to bear the expense.

The method of payment in, and of application of the money by the Court is dealt with in Rule 56 of the Workmen's Compensation Rules, 1907 (see post, p. 307).

Sched. I. (6). (6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from

Digitized by Google

which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order. Sched. I. (7).

This paragraph acts as a protection to the employer in the case where the person receiving the payment is not able to give a valid receipt.

The rule dealing with this matter is Rule 57 (see p. 309). Paras. 8–13 of this schedule contain the provisions with respect to sums paid into court.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants. Sched. I. (8).

Digitized by Google

The first part of this paragraph corresponds with para. 5 of the first schedule of the old Act, and deals with two alternative positions. Firstly, if the employer takes no step, and there is a dispute as to who is a dependant, then there must be an arbitration under this Act and the arbitrator must decide who is a dependant and to what share each dependant is entitled. Presumably in such a case the employer would have to pay the costs of the successful dependants; and his wiser course therefore would be to adopt the second alternative and pay the money into court, leaving the various claimants to fight it out. In this latter case the matter is adjudicated on by the county court—*i.e.*, by the judge as such, not sitting as arbitrator under this Act.

The second part of the paragraph, which enacts that both total and partial dependants may receive a share in the compensation, was rendered necessary by the decision of the Scotch Courts in *Fagan* v. *Murdoch* (1 F. 1179). In that case a claim was made by partial dependants, and the defence was that a total dependant was in existence, although he had made no claim. The Court held, after some hesitation, that clause *a* (ii) of para. 1 of the first schedule of the old Act, which was identical with the same clause in this Act, only operated where there were no total dependants (see ante, p. 192), and therefore that the claimants in that case were not entitled to any compensation.

The point never came before the English Courts, and it is by no means clear that they would have followed *Fagan* v. *Murdoch*. But this paragraph now puts the matter at rest.

Sched. I. (9). (9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the varia-

Digitized by Google

tion of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award as in the circumstances of the case the court may think just.

This paragraph is quite new law and may be most far-reaching in its results. It will be noticed that there are three different circumstances under which the variation may be made—(i) neglect of children by a widow, (ii) variation of the circumstances of the various dependants, (iii) any other sufficient cause.

(i) With regard to the first, it is almost impossible to say what amount of neglect would be sufficient; but presumably if it could be shown that the money which had been awarded to the children was being spent by the mother on her own pleasures, that would be sufficient, if coupled with a general neglect of her maternal duties, to enable the judge to order that the children's money should be paid to some one else on their behalf. If the mother applied the money properly for expenses of the household but neglected the children in other ways—as for instance, if she were constantly drunk, and did not wash or clothe them properly—it would be a very strong thing to say that the compensation money should not be paid to her, and in such a case it is submitted that the order would not be varied.

(ii) The power to vary the order as the circumstances of the dependants vary is a useful provision which gets over a difficulty that had been felt under the old Act. The

Digitized by Google

point came before the Court of Appeal in the case of *Manchester* v. *Carlton* (89 L.T. 730). In that case the family of dependants consisted of a mother and daughters and one son, and the county court judge was of opinion that the most advantageous way of dividing the money was that they should all share in it at first, and that then as the son began to be self-supporting his share in the payments should cease. The Court of Appeal held that there was no power under the Act to make any such arrangement nor to deprive any one not *sui juris* of his share in the compensation. Such a case would now be met by an application to the Court to vary its order under this section.

(iii) Such causes will, no doubt, be rare. Probably it would be a sufficient cause if the widow were obliged to live in a different town from the children. It might then be advisable for the money to be paid to some one who was acting as their guardian.

On application being made in accordance with rules of court. The rule dealing with this is Rule 58 (p. 310). It will be noticed that the application may be made by any one interested, and it may become necessary to decide who such a person is. For instance, a clergyman might discover that the mother was neglecting her children and might make the application. Could the Court act on such an application? The clergyman would be interested in the welfare of the children, no doubt, but would not be interested, in any legal sense, in the compensation money. On the whole, it seems probable that such an application would be a proper one on which the Court would be entitled to act.

It appears to a county court—i.e., to the judge as such, not as an arbitrator. So that if the award had originally been made by a lay arbitrator he would have no power to act under this section, and the application must be made to the judge.

Apportionment amongst the several dependants.—This can hardly mean that a sum actually paid over to a

Digitized by Google

particular dependant can be affected and that the dependant can be ordered to refund it. If so a dependant would be in a very precarious position. It probably only refers to money which has been invested by the Court and of which the interest only has been paid over.

The paragraph will be useful in enabling money which has been ordered to be invested to be taken out for the purpose of paying for apprenticeship and similar matters.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar. Sched. I. (10).

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor shall not apply to such sums. Sched. I. (11).

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court. Sched. I. (12).

(13) Any person deriving any benefit from any moneys invested in a post office savings bank Sched. I. (13).

Digitized by Google

under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statutes or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

These four paragraphs (which should be read together; see *Daniel* v. *Ocean Coal Company* [1900], 2 Q.B. 250) are almost identical with the corresponding ones in the old Act.

There are a number of statutes dealing with the Post Office Savings Banks. The most important are 24 and 25 Vic. c. 14, 26 and 27 Vic. c. 14, 37 and 38 Vic. c. 73, 43 and 44 Vic. c. 36, 50 and 51 Vic. c. 40, 54 and 55 Vic. c. 21, and 56 and 57 Vic. c. 69.

The statutes dealing with the purchase of annuities are 16 and 17 Vic. c. 45, 27 and 28 Vic. c. 43, and 45 and 46 Vic. c. 51.

The second part of para. 11 is necessitated by the provisions in the statutes dealing with savings banks, which forbid a greater sum than £200 being deposited in the name of any one depositor, and which require him to make a declaration as to the amount of his deposits. This paragraph is for the protection of the registrar; and para. 13 extends a similar protection to the beneficiary himself, who might otherwise be liable to penalties if the sum in his private account together with the compensation money exceeded the prescribed limit.

Sched. I. (14). (14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If

Digitized by Google

the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

This paragraph should be read in conjunction with para. 4 of this schedule (p. 212, ante). Para. 4 deals with the position prior to the award, and this paragraph applies the same provisions to the workman who is actually receiving weekly payments.

The effect of it is that the workman can be called on to submit himself to examination by a medical practitioner, in accordance with regulations made under para. 15; and in default of doing so, his weekly payments are to cease.

As to the effect of the medical practitioner's report, see the note on the next paragraph.

Duly qualified medical practitioner is a person registered under the Medical Act, 1858.

In any way obstructs. In *Finnie & Son* v. *Duncan* (7 F. 254) the workman after giving notice of the accident had gone to Australia. It was held that this was an obstruction of the medical examination and entitled the employer to a stay.

In *Baird* v. *Kane* (7 F. 461) the workman had twice submitted to an examination and had then gone to live in Dublin. The employer then requested him to return to Glasgow for a further examination, but he refused to do so and offered to submit himself to examination in Dublin. It was held that this did not amount to an obstruction (see also *Edwards* v. *Guest, Keen, & Nettlefold* [1904], 1 K.B. 339; *Niddrie and Benhar Coal Company* v. *M'Kay*, 5 F. 1121; and *Strannigan* v. *Baird*, 6 F. 784).

Shall be suspended. This should be read in conjunction with para. 20 of this schedule. If at a later period the suspension is ended and the weekly payments

Digitized by Google

are renewed, nothing is to be given in respect of the period of suspension.

Sched. I. (15). (15) A workman shall not be required to submit himself for examination by a medical practitioner under para. (4) or para. (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that

Digitized by Google

certificate shall be conclusive evidence as to the matters so certified. Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served, and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

This paragraph is all new law, and should it be much resorted to, may be very useful in diminishing costs in those cases where the only dispute between the parties is as to the workman's condition. But it is feared that the paragraph will remain practically a dead letter, since the reference to a medical referee can only be made when

Digitized by Google

both parties apply for it. Had it been made compulsory on the application of one party, it would have put an effectual stopper on malingering, and it is to be regretted that the paragraph has been settled in its present form.

The first clause enacts that the submission of a workman to medical examination shall be in accordance with rules to be made by the Home Secretary, and prevents the workman being unnecessarily harassed by too frequent examinations. The rules referred to were issued on June 28, 1907, and are set out in Appendix F.

The second and third clauses are the important ones, and their effect is as follows: When the workman, either at his own instigation or in accordance with para. 4 or 14, has submitted himself to examination, the medical practitioner has to make a report on his condition. Then, if the employer and workman can come to an agreement that the report is a correct one, no further question as to the workman's condition or fitness for employment can arise. But if no such agreement can be come to, then both parties may apply to the registrar, asking for the matter to be referred to a medical referee. Then on the payment of the prescribed fee the matter is referred, and the medical referee gives a certificate which is conclusive evidence of the workman's condition and fitness for employment.

It will be seen how very useful this paragraph might be; for in many arbitrations the workman's condition may be the only question outstanding between the parties, and in applications to review the award it is more often than not the only question.

A medical referee is appointed under sec. 10 of the Act.

The fourth clause extends the provisions of clauses 2 and 3 to another case, namely, where the incapacity of the workman is admitted and the dispute is as to whether it is due to the accident or not. This adopts the law laid down in Scotland in *Boase Spinning Company* v. *M'Avan* (38 S.L.R. 772), where the question of a workman's condition was referred to a doctor who

Digitized by Google

certified that he was incapable of work, but that this was not due to the accident but to old age and other causes. It was held that this certificate was conclusive and prevented the workman from recovering compensation.

The fifth clause extends the provisions of paras. 4 and 14 (*q.v.*) to the reference to the medical referee (see the cases referred to in the notes on those paragraphs at pp. 212 and 221).

As the reference can only take place on the application of both parties, it is very unlikely that the workman would refuse to submit himself to the referee for examination. "On being required to do so" must mean "on the registrar making the order for him to so submit himself," as the rules empower the registrar to make such an order.

The rules made under this section (Rule 54) are set out on p. 305.

On this paragraph see *Edwards* v. *Guest, Keen, and Nettlefold* ([1904], 1 K.B. 339).

Sched. I. (16).

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act. Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding 50 per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

Digitized by Google

Only the proviso to this paragraph is new law; the first part is taken from the Workmen's Compensation Act, 1897, and there are several decisions under that Act which must be considered.

In *Crosfield* v. *Tanian* ([1900], 2 Q.B. 629) the Court of Appeal had to decide whether the judge had any power to hold such a review where nothing had occurred to alter the position of the parties since the original hearing. If such a power existed, it would in effect amount to the granting of a new trial on the question of amount; and for this reason it was held that it was a condition precedent to a review that there should have been a change in the circumstances since the date of the award.

This must be compared with *Sharman* v. *Holliday* ([1904] 1 K.B. 235). There the award had been reduced to a nominal amount by the county court judge, acting on the evidence of medical experts who said that the workman had recovered. The workman had then tried to get work, but in spite of his best efforts had been unable to do so, on account of his injury. It was held by the Court of Appeal that these unsuccessful efforts amounted to a change in the circumstances which entitled him to a review (cf. also *Clark* v. *Gas Light and Coke Company*, 21 T.L.R. 184, supra, p. 211).

In *Norman and Burt* v. *Walder* ([1904], 2 K.B. 27) it was held that on an application to review the judge must take into consideration any amount earned by the workman in a business set up by himself after the accident.

In *Bryson* v. *Dunn and Stephen* (8 F. 226) the workman earned 36s. 8d. per week before the accident. He was totally incapacitated and was awarded 18s. 4d. per week. Later he partially recovered and was taken back by his employers at 17s. a week. It was held that, on an application to review, the arbitrator was not bound to reduce the payments.

It has been held that if on a review the judge termi-

Digitized by Google

nates the payments, that is final, and no further review can be held. This was the decision of the House of Lords in *Nicholson* v. *Piper* ([1907], A.C. 215), where it was pointed out that if the judge were of opinion that the workman was not entitled to a substantial amount, but nevertheless wished to keep the award alive in case the workman's condition should become worse, the course could be taken of reducing the payments to a nominal sum.

The review may take place out of court by agreement between the employer and workman. In *Bradbury* v. *Bedworth Coal and Iron Company* (the *Times*, March 17th, 1900) the workman and employer had agreed that the compensation should be so much a week, and later the workman went back to work with the same employer and received no further compensation. It was held that this amounted to an agreement that the payments should be ended. And cf. *Field* v. *Longden* ([1902], 1 K.B. 47) and *Beath and Keay* v. *Ness* (6 F. 168).

This must be compared with the decision in *Williams* v. *Vauxhall Colliery Company* ([1907], 2 K.B. 433), where the Court of Appeal held that a mere going back to work was not conclusive of an agreement to end the payments. This case also decided the important point that the rights of the workman and of his dependants are separate rights, and therefore that an agreement by the workman that the payments should be ended would not deprive the dependants of their right to compensation in the event of his death; subject only to this, that the employer cannot be called on to pay out a greater sum than the maximum allowed by the Act; so that if the amount paid to the workman before his death plus the amount awarded to the dependants exceeds that maximum, the dependants' compensation must be *pro tanto* reduced.

It has been decided in *Morton* v. *Woodward* ([1902], 2 K.B. 276) that an arbitrator has power to antedate his award and make the amount payable under it start from an earlier date than that on which the applica-

Digitized by Google

tion for review came before him. In that case the county court judge found that the incapacity had ceased from a date in September, 1901; but the application to review did not come before him till the following April. From September till April no payments had been made to the workman, so that arrears were due to him. The county court judge thought he had no power to deprive the workman of these arrears, but he was overruled by the Court of Appeal.

This decision has been criticised in the Scotch case of *Steel* v. *Oakbank Oil Company* (5 F. 244), and on almost similar facts it was held that the arbitrator could only review the payments from the date of his order; and somewhat analogous is the decision in *Allan* v. *Spowart*, (8 F. 811), where it was held that the arbitrator had no power under this section to order the payments to cease on a specified future day; and cf. also *Pumpherston Oil Company* v. *Cavaney* (5 F. 963). The English decision of course remains binding on the English courts; and it is submitted it is the right one, for this reason, that the only construction consistent with the scheme of the Act is that the payment should continue during the incapacity of the workman and no longer.

There is no power to join a claim for a review under this paragraph with one for redemption under the next paragraph at a fixed maximum (*Castle* v. *Atkinson* [1905], 1 K.B. 336).

In the Scotch case of *Johnstone* v. *Cochran & Co.* (6 F. 854) the sheriff had referred the matter to a medical referee and made his review acting on the referee's report, refusing to hear evidence tendered by the workman. It was held by the Court of Session that he was obliged to hear the evidence. See also on this section *Bryce* v. *Connor* (7 F. 193); *Ferrier* v. *Gourlay* (4 F. 711); and *Dowds* v. *Bennie* (5 F. 268).

The proviso is new, and the workman who comes within its provisions gets an advantage in two ways. First of all, the payments are not "subject to the

Digitized by Google

maximum above provided," but may be increased up to 50 per cent. of the amount he would probably be earning at the date of the review if no accident had occurred. Secondly, it is presumed that the decision in *Crosfield* v. *Tanian* ([1900], 2 Q.B. 629) would not apply in such a case, and he would not therefore have to show that there had been a change in the circumstances since the award was made.

The proviso must be read in conjunction with proviso (*b*) of para. 1 of this schedule. By that proviso the workman under twenty-one years of age, if at the time of the accident he was earning less than 20s. a week, might get as a weekly payment 100 per cent. of his wages, instead of merely 50 per cent., but he was not to get more than 10s. a week. By this proviso that sum may be increased to half his probable earnings if he had remained uninjured, but he is not to get more than 20s. a week.

But notice that this proviso does not only apply to workmen within proviso (*b*) of para. 1. For a youth under twenty-one might at the time of the accident be earning more than 20s. a week, in which case he would only have received 50 per cent. as weekly payments. But he would still be entitled to have a review under this proviso.

No indication is given in the Act as to how the arbitrator is to arrive at the sum which the workman would "probably have been earning," and it is a question of fact which he must determine for himself as best he can. A rough and ready rule would be to find out what position other youths of the workman's grade had attained to.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in Sched. I. (17).

Digitized by Google

the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to 75 per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act; and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

The provision with regard to the manner of calculating the amount of the sum to be paid is new. There were no such directions in the old Act, and judges were in the habit of taking the value of a life annuity as a basis and deducting something to allow for the contingency of a recovery or of the workman's early death. Under both Acts the application for redemption can only be made by or on behalf of the employer, not by the workman. Consequently under the old Act such applications were seldom made, for the employer had little or nothing to gain.

The method of calculating the annuities is set out in the Post Office Regulations for 1908. It will be noticed that the method of calculation on the 75 per cent. basis only applies when the incapacity is permanent. In other cases the amount must be settled by arbitration.

No method is indicated by which the question of the permanency of the incapacity is to be settled; the provisions of para. 15 of this schedule only apply to medical examinations under paras. 4 and 14. But if the workman was examined under para. 14 and then the matter was submitted to a medical referee under para. 15 and the

Digitized by Google

medical referee reported that the incapacity was permanent, that would, no doubt, be conclusive for the purposes of this paragraph. In any other case the arbitrator could submit the matter to a medical referee for a report under para. 15 of Sched. II., infra. p. 262.

The proviso refers to cases where the agreement for redemption is made between the parties, without an application to the Court and not necessarily six months after the payments had commenced. But for it doubts might be cast on the validity of such an agreement, having regard to the provisions of this paragraph and of the sections of this Act dealing with contracting out. This proviso must be read in conjunction with para. 10 of Sched. II., which provides that agreements for redemption shall be of no effect unless a memorandum of them is registered in accordance with the provisions of para. 9 of the second Schedule (see p. 247). It has been held in *Castle* v. *Atkinson* ([1905], 1 K.B. 336) that there is no power to hear an application that a weekly payment shall be redeemed at a sum not to exceed a certain maximum figure.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable. Sched. I. (18).

Digitized by Google

This paragraph is new law; it should be read in conjunction with the rule made under it (Rule 60), which is set out at p. 310, and the amended Rule at p. 483.

The scheme of the paragraph is that if a workman goes abroad he loses his right to be compensated, unless a medical referee certifies that the incapacity is likely to be of a permanent nature. In that case he can get the accumulated weekly payments sent to him quarterly on proving his identity and the continuance of the incapacity in the way prescribed in the rules. This paragraph, on the one hand, prevents a man going abroad and drawing pay while the employer is unable to find out anything about him, and on the other hand makes it possible for a permanently injured workman to live where he pleases.

Notice that under this paragraph the medical referee "certifies" and does not "report." Therefore his finding is conclusive.

Sched. I. (19). (19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

The right to the payments would not therefore pass to the trustee in bankruptcy of the workman, nor can such right be given by way of security for a debt not dealt with by the workman in any way at all.

Such costs as are awarded to the workman's solicitor in the arbitration may be deducted from the compensation (see Sched. II. para. 14).

Sched. I. (20). (20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

See secs. 4 and 14 of this schedule and the notes thereon at p. 212 and p. 221.

Digitized by Google

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of sec. 8, sec. 16, and sec. 41 of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme. Sched. I. (21).

See sec. 3 of the Act, p. 104.

The proviso to sec. 8, subsec. 1, of the Friendly Societies Act, 1896, 59 and 60 Vic. c. 25: "provided that a Friendly Society which contracts with any person for the assurance of an annuity exceeding £50 per annum or a gross sum exceeding £200 shall not be registered under this Act."

Sec. 16: "A society assuring a certain annuity shall not be entitled to registry, unless the tables of contributions for the assurance, certified by the actuary of the National Debt Commissioners or by some actuary approved by the Treasury who has exercised the profession of actuary for at least five years, are sent to the registrar with the application for registry."

Sec. 41: "A member, or person claiming through a member, of a registered friendly society or branch, shall not be entitled to receive more than £200 by way of gross sum together with any bonuses or additions declared upon assurances not exceeding that amount, or (except as provided by this Act) £50 a year by way of annuity from any one or more such societies or branches."

The effect of this is that where payment is to be made by a friendly society under a scheme certified by the registrar of friendly societies under sec. 3 of this Act, the enactments restricting the amount which may be paid out to any member are not to apply.

(22) In the application of this Act to Ireland the provisions of the County Officers and Courts Sched. I. (22)

Digitized by Google

(Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

The County Officers and Courts (Ireland) Act, 1877, 40 and 41 Vic. c. 56 (the reference in the marginal note in the Statutes is wrong), sec. 39: "The Lord Chancellor, with the concurrence of the chairman of each county, may from time to time order at what places and in what post office savings bank or other bank moneys paid into court in any equitable proceedings under this Act shall be deposited, and may make rules and regulations for such deposits; and every such deposit, if in a post office savings bank, may be made without restriction as to amount, and without the declaration required by a depositor; and no money when deposited under this Act shall be paid out except upon an order signed by the Lord Chancellor or by the chairman of the Court by the order of which the money was deposited."

Compare this with paras. 10–13 of this schedule.

Digitized by Google

SCHEDULE II

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided. Sched. II. (1).

The Workmen's Compensation Act, 1897, created a new tribunal in this committee, but it is not one which has been or is ever likely to be of much use. The Arbitration Act does not apply to proceedings before a committee (see para. 4, infra), and the committee has no power to administer an oath or to compel the attendance of witnesses or the production of documents. There is no provision for an appeal from a committee, whose decision therefore is final, unless it voluntarily submits a point of law for the decision of the county court judge (under para. 4 hereof).

Matter to be settled by arbitration. There can be no arbitration unless a question has arisen (see *Field* v.

Digitized by Google

Longden [1902], 1 K.B. 47, and *Caledon* v. *Kennedy* (8 F. 960).

Representative of an employer and his workmen. It is not very clear what this means; presumably if the committee was elected by the employer and by the majority of the workmen it would be sufficient, but the point is not likely to arise, as either party may object to the tribunal merely by sending a notice in writing to the other party, and in that case the committee has no power to proceed. "Representative" is defined in the Century Dictionary as meaning "acting as substitute for or agent of another or others; performing the functions of another or others."

Power to settle matters. Certain powers and duties are expressly given to committees by the Act. Thus—

(i) By para. 15 of this schedule they may submit any matter to a medical referee for his report.

(ii) By para. 9 of this schedule they must send a memorandum of their award to the registrar of the county court for registration.

(iii) By para. 4 of this schedule they can submit any point of law to the county court judge for his decision.

(iv) By this present paragraph they may at their discretion refer the matter to arbitration.

Be referred by them. It will be noticed that although the committee may refer the matter to arbitration, they have no power to appoint an arbitrator.

Sched. II. (2). (2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

Digitized by Google

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorises, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge. Sched. II (3).

There are thus altogether four different tribunals before whom the parties can bring their dispute—

(i) The committee.

(ii) An arbitrator of their own choosing.

(iii) The county court judge.

(iv) An arbitrator appointed by the county court judge with the consent of the Lord Chancellor.

Of these four tribunals, neither the first nor second is likely to be much used, the committee for the reasons already given, and the arbitrator selected by the parties because it is very unlikely that the parties ever will agree on an arbitrator. For the arbitrator's fee has to be paid by some one, and the workman is nearly always impecunious; if therefore the fee has to be paid by the employer, it is extremely unlikely that the workman would agree to have the matter settled by a man whose fee was being paid by the other side.

There seems no reason why the parties should not always come to the county court, where, without the payment of any fee (see para. 13 of this schedule), they can get the service of a trained lawyer to decide their dispute.

Within six months. Under the Workmen's Compensation Act, 1897, the time was three months.

Arbitrator agreed on by the parties. Unlike the arbitrator appointed by the judge, this arbitrator has no special powers conferred on him, neither those of a county court judge nor those conferred on arbitrators

Digitized by Google

in other matters by the Arbitration Act, 1889. His position, therefore, is the same as that of a committee, and he cannot compel the attendance of witnesses nor the production of documents nor administer an oath. His powers and duties are the same as those of a committee (vide supra, p. 236).

According to the procedure prescribed by rules of court. These rules, which are dated June, 1907, are set out in Appendix A. They apply to arbitrations held by the judge or by the arbitrator appointed by the judge, but not to the committee or to the arbitrator agreed on by the parties.

In England. The power of a county court judge to appoint an arbitrator only extends to England. In Scotland the sheriff and in Ireland the county court judge or recorder have no such power and must in all cases make the award themselves. See para. 17 (c) of this schedule.

Sched. II. (4). (4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the

Digitized by Google

production of documents as if the proceedings were an action in the county court.

This paragraph is very nearly the same as the corresponding one in the old Act. There are two differences. Firstly, it is made clear that a committee can submit a point of law to a county court judge; and secondly, the right of appealing direct to the Court of Appeal is extended to all cases. Under the old Act it was only from a decision in an arbitration—*i.e.*, from the award—that the appeal went straight to the Court of Appeal. In other matters the appeal was to the Divisional Court. Now the words are added, "where he gives any decision or makes any order under this Act," which have the effect of making the Court of Appeal the right tribunal to appeal to in all cases.

The Arbitration Act gives to arbitrators the power to state a case for the Divisional Court, and as that Act does not apply here, the committee or arbitrator are given an alternative power to state a case for the county court judge.

The committee or arbitrator have to use their discretion as to whether or not they will state a case. If it could be shown that they had not exercised a judicial discretion it might be possible to obtain a mandamus compelling them to state a case (see *R.* v. *Evans*, 62 L.T. 570, and *R.* v. *Justices of Southampton*, 96 L.T. 697).

The decision of the judge on any question of law. There is thus no appeal on a question of fact from any of the four possible tribunals. On this point see the remarks of A. L. Smith, L.J., in *Smith* v. *Lancashire and Yorkshire Railway* ([1899], 1 Q.B. 141). From the decision of the county court judge on a point of law there is an appeal as of right to the Court of Appeal, whether the point of law comes before the county court judge as a case stated by a committee or either kind of arbitrator, or whether it arises in an arbitration conducted by the judge himself.

Digitized by Google

Court of Appeal. The procedure on such appeals is governed in England by Rules of the Supreme Court, O. lviii. Rule 20, and in Ireland by Rules of the Supreme Court (Ireland) O. lviii. Rule 24. The paragraph does not apply to Scotland.

Under the Workmen's Compensation Act, 1897, it was held that appeals from orders which were not awards lay to the Divisional Court. Thus an appeal against the refusal of a county court judge to direct a review of a taxation of costs had to be to the Divisional Court (*Rigby* v. *Cox* [1904], 1 K.B. 358; *Keane* v. *Nash*, 88 L.T. 790). Similarly with an appeal from a decision of the county court judge directing payments by insurers under sec. 5 of the Workmen's Compensation Act, 1897 (*Kniveton* v. *Northern Employers' Company* [1902], 1 K.B. 880; *Morris* v. *Northern Employers' Company* [1902], 2 K.B. 165; *Leach* v. *Life and Health Insurance Association* [1901], 1 K.B. 707). So also in *Welland* v. *Great Western Railway* (16 T.L.R. 297) it was held that an application which amounted to a request for a mandamus to a county court judge to do his duty could not be made to the Court of Appeal. And in the same way it was held in Scotland in *Cochrane* v. *Trail* (38 S.L.R. 18) that in dealing with an application for a warrant to register an agreement under the provisions of the Workmen's Compensation Act, 1897, the sheriff is not acting as an arbitrator and so it was not possible to bring up his decision to the Court of Session (but see *Williams* v. *Army and Navy Auxiliary Co-operative Society*, 23 T.L.R. 408).

But all these rather purposeless distinctions have now been swept away by the inclusion in this section of the words " or where he gives any decision or makes any order under this Act," which are sufficiently wide, it is submitted, to give to the Court of Appeal jurisdiction to hear all appeals under this Act.

If the arbitrator or committee in the exercise of their discretion refuse to state a case, there is no means

Digitized by Google

of appealing at all (see *Gibson* v. *Wormald and Walker* [1904], 2 K.B. 40).

The procedure on appeal from the Court of Appeal to the House of Lords is as in ordinary cases. Under the old Act there was no appeal in Scotch cases from the Court of Session to the House of Lords (*Osborne* v. *Barclay* [1901], A.C. 269), but such an appeal is expressly given in this Act by para. 17 (*b*) of this schedule (*q.v.*). It should be noticed that neither the Court of Appeal nor the House of Lords has any power to assess compensation (*Stuart* v. *Nixon* [1901], A.C. 79).

Security for Costs of an Appeal.—This question has been much discussed in the Court of Appeal, and in nearly all cases of appeal by workmen security is ordered, the amount varying from £10 to £15.

It was first decided in *Hall* v. *Snowdon* ([1899], 1 Q.B. 593) that the ordinary rule of the Court of Appeal as to ordering security for the costs of an appeal was applicable to appeals under the Workmen's Compensation Act, 1897.

And in the same year it was held in *McLaughlin* v. *Clayton* (the *Times*, February 28, 1899) that the fact that the case is conducted on behalf of the workman by a trades union does not alter the rule.

And even if the trades union has paid the costs of the arbitration below security will be ordered (see *Haddock* v. *Humphries*, the *Times*, August 1, 1899).

In *Harwood* v. *Abrahams* ([1901], 2 K.B. 304) it was argued that, as the appeal from the arbitrator was in effect an application for a new trial, and as the practice of the Court of Appeal is not to order security for costs in applications for new trials, no security should be ordered, but the Court overruled this contention.

In *Skeggs* v. *Keen* (the *Times*, May 16, 1899) the workman, although he was not in a position to make an affidavit asking to be pauperised, was yet in a state of great poverty as a result of the accident, and it was

Digitized by Google

held that in these special circumstances no security should be ordered.

But in *Rees* v. *Richards* (the *Times*, August 8, 1899) security was ordered where the circumstances were the same as in *Skeggs* v. *Keen*, except that it was not alleged that the workman's poverty was due to the accident.

In *Huball* v. *Everitt* (16 T.L.R. 168) a stay of execution had been granted by the county court judge and a point of law was raised by somewhat special circumstances, and the Court treated the case as exceptional and ordered no security.

But in *Shea* v. *Drolenvaux* (88 L.T. 679), where a stay of execution had been granted, but there were no special circumstances, the Court of Appeal made the usual order for security for costs, and expressly laid it down that the mere fact that the county court judge has granted a stay of execution is not by itself sufficient reason for dispensing with security for costs.

In *Stanland* v. *North Eastern Steel Company* (23 T.L.R. 1) it was held, following the *Constantine* (4 P.D. 156), that it is the duty of the respondent to ask the appellant to give security before making an application to the Court, so as to save costs.

An appeal is made by an eight days' notice of motion. In the case of a final appeal the notice must be given within three months, and in an interlocutory appeal within fourteen days of the award or order appealed against.

It has been held in *Isaacson* v. *New Grand (Clapham Junction), Ltd.* ([1903], 1 K.B. 539) that, in an action under the Employers' Liability Act, 1880, in which the workman was unsuccessful, the mere fact that an application is made by the workman to have compensation assessed under sec. 1, subsec. 4, of the Workmen's Compensation Act, 1897, is not such an election of remedies as to prevent him from appealing. But it is otherwise if compensation has actually been assessed (*Neale* v. *Electric Company* [1906], 2 K.B. 558).

Digitized by Google

The judge of the county court . . . action in the county court. As these arbitrations are not actions and as the Arbitration Act does not apply, there would, apart from this section, be no power in the judge or arbitrator to compel the attendance of witnesses or the production of documents. As it is, this section only applies to the county court judge and the arbitrator appointed by him, and no such powers are given to a committee or an arbitrator agreed on by the parties.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor. Sched. II. (5)

This is new law and should be useful, particularly in cases where it is important to know how long the incapacity is likely to last—as, for instance, where an application is made by the employer under para. 17 of Sched. I. for the commutation of the payments by a lump sum and the incapacity is not permanent.

It should be noticed that the provision only applies to a county court judge, and not to a committee or either sort of arbitrator. It is not quite clear why this distinction has been made.

Medical referees are appointed by the Home Secretary under the powers given him by sec. 10 of the Act. For their powers and duties see that sec. and para. 15 of Sched. I. and para. 15 of this schedule, and see also Appendices E & G.

An application that a medical referee be summoned may be made by either party eight days before the hearing (Rule 52).

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person. Sched. II. (6).

This is reproduced from the Workmen's Compensation Act, 1897. The rule dealing with the matter is Rule 33 (*q.v.*, p. 293); any party may appear as of right—

Digitized by Google

(*a*) in person,
(*b*) by a solicitor,
(*c*) by counsel;
and, by leave of the judge or arbitrator, he may appear—
(*d*) by a member of his family,
(*e*) by a person in his exclusive and permanent employ;
(*f*) in the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation;
(*g*) by any officer or member of any society or other body of persons of which such party is a member or with which he is connected; or
(*h*) under special circumstances, by any other person.

The second clause of the rule provides that no person other than a solicitor can recover any fee for his services other than his expenses.

The rules of court only apply to arbitrations before the county court judge and the arbitrator appointed by him. So that in arbitrations before a committee or an arbitrator agreed on by the parties, the committee or arbitrator, as the case may be, have a free hand in deciding whom they will hear.

Sched. II. (7). (7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the judge of the county court.

Digitized by Google

This paragraph differs in three respects from the corresponding one in the Workmen's Compensation Act, 1897.

Firstly, the old Act made no mention of the committee, and of its power to award costs. This makes no substantive difference in the law, as it is clear that a committee which was properly seised of an arbitration had power to deal with the costs of it.

Secondly, the old Act gives no express power to the judge to review the taxation of costs. When he himself sat as arbitrator there is no doubt that he had such power as part of his inherent jurisdiction as county court judge; and in the case of an arbitrator appointed by the judge the arbitrator would apparently have had such power by virtue of para. 3 of this schedule, which gave him all the powers of a judge. But there was formerly no means by which a review of a taxation by a committee or "agreed" arbitrator could be had, and to that extent the paragraph is new law.

Thirdly, under the old Act the amount to be awarded as costs by the committee or 'agreed' arbitrator was not subject to any limit, but now it must not exceed the maximum prescribed by the rules of court.

The rule dealing with costs is Rule 61, which is set out at p. 312. It will be noticed that the costs have to be taxed in accordance with the county court scales, and that where the subject-matter of the arbitration is not a capital sum—*i.e.*, is a weekly payment—the arbitrator has to fix its capital value for the purpose of deciding which scale is to apply. The county court scale of costs is set out in Appendix K.

No form of procedure is laid down in the Act or the rules for the conduct of a review of taxation. But Rule 80 says that the ordinary county court procedure is to apply in matters not otherwise specially provided for. So such a review would be governed by the county court rules. The discretion of an arbitrator in awarding the costs must be exercised in a judicial manner (see per Jessel, M.R., *in re* Taylor, 4 C.D. at p. 159). In *Welland* v.

Digitized by Google

Great Western Railway Company (16 T.L.R. 297) it was held that an arbitrator could award a lump sum for costs; but now presumably such a sum would be subject to taxation. The same case decides that in fixing the amount of the costs the arbitrator may take into consideration any offer of compensation which has been made. And this decision has now been incorporated in the rules (Rule 61 (3), p. 313).

In *Jones* v. *Great Central Railway* (4 W.C.C. 23) it was held that the arbitrator has no power to make a successful party pay his opponent's costs. But where an unsuccessful action has been brought by a workman under the Employers' Liability Act, 1880, and compensation has been assessed in accordance with sec. 1, subsec. 4, of the Act, the arbitrator has power to give the workman the costs of the proceedings (*Cattemole* v. *Atlantic Transport Company* [1902], 1 K.B. 204). It has been held in *Rigby* v. *Cox* ([1904], 2 K.B. 208) that a general rule of a county court to treat applications under Sched. I. para 16 to review awards as interlocutory applications is bad.

It was decided in Scotland in *Rosewell Gas Coal Company* v. *M'Vicar* (7 F. 290) that the employer cannot set off against the compensation costs awarded him on an application to review.

Para. 14 of this schedule and Rule 65 must be read in conjunction with this section. By them the arbitrator is empowered to order that the costs of a workman's solicitor shall be a lien on the amount awarded as compensation (see post, p. 259).

Sched. II. (8). (8) In the case of the death or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

Under the old Act the power of appointing a new arbitrator was vested in the judges of the High Court. This was somewhat anomalous, and the present section is more consonant with the general spirit of the Act.

Digitized by Google

Some such provision as this is necessary in the case of an "agreed" arbitrator; for a submission to arbitration can only be withdrawn by agreement, so that if the arbitrator refused to act and no such agreement was come to, there would be a deadlock.

Rule 40 governs the procedure in applications for the appointment of a new arbitrator. An application in writing must be made to the judge in the form prescribed (Form 34, *q.v.*, p. 384) to fix a time and place for the hearing. When this has been fixed the registrar issues a summons to the applicant, which the applicant has to serve on the other party.

Sched. II. (9).

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(*a*) No such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and—

(*b*) where a workman seeks to record a memorandum of agreement between his employer

Digitized by Google

and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and—

(*c*) the judge of the county court may at any time rectify the register; and—

(*d*) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge, who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and—

Digitized by Google

(*e*) the judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

All the provisos to this paragraph except (*c*) are new, but the first part of the paragraph is the same as the corresponding one in the Workmen's Compensation Act, 1897, except that the directions in the old Act pointing out in which county court the memorandum is to be registered are here omitted, as this is provided for by the general directions in para. 11 of this schedule.

The scheme of this paragraph is as follows. A memorandum has to be registered when—

(*a*) the amount of compensation has been ascertained;

(*b*) the amount of a weekly payment has been varied; or

(*c*) any other matter has been decided under this Act.

But there need be no memorandum of any matter decided by the county court judge, but only of matters decided by—

(i) a committee;

(ii) an arbitrator agreed on by the parties;

(iii) an arbitrator appointed by the judge; or

(iv) agreement.

Such memorandum is to be sent, in the manner prescribed by the rules, by—

Digitized by Google

(i) the committee; or
(ii) the arbitrator; or
(iii) any party interested;
to the registrar of the county court.

The registrar, on being satisfied of its genuineness and subject also to the rules, has then to record such memorandum in a special register kept for the purpose.

On his so doing, the memorandum becomes enforceable as a county court judgment.

It will be seen that, apart from the provisos, the only ground on which a registrar can refuse to record a memorandum is that he is not satisfied of its genuineness; and under the old Act this was the only ground on which he could refuse (see *Colville* v. *Tighe*, 8 F. 179; and *Macdonald* v. *Fairfield Shipbuilding and Engineering Company*, 8 F. 8). But now by provisos (*b*) and (*d*) two further grounds are added. Proviso (*b*) deals with the case where a workman seeks to record a memorandum after returning to work and when he is earning the same wages as before the accident. If the employer objects, the matter must be referred to the judge, who may either refuse to allow the memorandum to be recorded or may only allow it to be recorded subject to terms. Proviso (*d*) enables the registrar to refuse to register an agreement if he considers—

(*a*) that the sum agreed on is inadequate, or
(*b*) that the agreement has been obtained by fraud or undue influence or other improper means.

This only applies to—

(i) agreements for the redemption of weekly payments by a lump sum, and
(ii) agreements as to the amount of compensation payable to persons under legal disability or to dependants.

If he so refuses, he refers the matter to the judge, who, in accordance with rules of court, may make such order as he thinks just.

Digitized by Google

On receiving a memorandum to be registered the registrar has to send notice to the parties interested, and by proviso (*a*) the memorandum may not be recorded until seven days after the despatch of such notice.

Provisos (*c*) and (*e*) give powers to the judge with regard to the register. By (*c*) he may at any time rectify it. (*e*) deals with a case where a memorandum has already been recorded. It applies, like (*d*), only to the cases of—

(i) agreements as to the redemption of a weekly payment by a lump sum, and

(ii) agreements as to the amount of compensation payable to persons under any legal disability or to dependants.

It gives power to the judge to order the record of such an agreement to be removed from the register on its being proved to his satisfaction that it was obtained by fraud or undue influence or other improper means.

Amount of compensation. It often happens that the workman is earning as much at the time of the arbitration as he was before the accident, but it is desired to make an award so as to keep the employer's liability alive, in case the workman's earning power should decrease. In such cases either of two courses may be followed; the arbitrator may make an award declaring the liability, but adjourning the amount, as was done in *Chandler* v. *Smith* ([1899], 2 Q.B. 506); or he may make an award for a nominal sum of one penny a week, and the workman can subsequently apply for a "review" (see *Irons* v. *Davis* [1899], 2 Q.B. 330). Where the employer and workman come to an *agreement* under such circumstances, proviso (*b*) of this section applies.

A memorandum thereof. An agreement to pay compensation can be the subject of a memorandum, whether it be in writing or be verbal or be implied (*Jones* v. *Great Central Railway*, 4 W.C.C. 23; *Cochrane* v. *Traill*, 37 S.L.R. 662). It is not necessary to send a memorandum of an award to the registrar if the award itself be sent (*Bailey* v. *Plant, No.* 2, 17 T.L.R. 449).

Digitized by Google

Shall be sent. There is no limit of time during which the memorandum must be sent (*Cochrane* v. *Traill*, 37 S.L.R. 662).

Although in both Acts the imperative words "shall be sent" are used, yet under the old Act the only result of not sending a memorandum was that the advantages of having a county court judgment were not obtained. But this has now been altered in certain cases by para. 10 (infra, p. 255).

Rules of court. The rules dealing with this section are Rules 41–49, which set out the procedure where a memorandum has to be recorded in the register (see p. 301).

Shall record. The fact that a request for arbitration has been made by one of the parties is not a ground on which the registrar can refuse to record a memorandum (*Jones* v. *Great Central Railway*, 4 W.C.C. 23). And see also *Gourlay* v. *Sweeney* (8 F. 965). In that case the employer voluntarily paid the full amount for some weeks. He then threatened to stop the payments. The workman then applied for arbitration. It was held that the petition was incompetent; for (i) there was no question between the parties, and (ii) the mere fact that there was no such agreement as could be registered did not show that there was a question. Under the old Act, the registrar could not refuse to register because the workman was no longer entitled to the agreed amount (*Blake* v. *Midland Railway Company* [1904], 1 K.B. 503; *Cammick* v. *Glasgow Iron and Steel Company*, 4 F. 198; *Dunlop* v. *Rankin*, 4 F. 203). But proviso (*b*) has altered this in certain cases.

Shall be enforceable. It has been held in *Bailey* v. *Plant* ([1901], 1 K.B. 31) that a committal order under the Debtors Act may be made on a judgment summons taken out to recover arrears of payment due under a registered agreement, and provision is now made in the rules (by Rule 68, p. 317) for the conduct of proceedings under the Debtors Act.

Where any party liable to pay compensation or costs

Digitized by Google

under any memorandum has made default in payment, execution may issue against his goods without the leave of the Court. But where the sum in question is not payable into court the party applying for execution must satisfy the registrar by affidavit or otherwise as to the amount in payment of which default has been made. (See Rule 67, p. 316).

Proviso (*a*). This gives to all parties interested an opportunity of coming forward and showing grounds why the memorandum should not be registered.

Proviso (*b*). It was held under the old Act that the fact that the workman was no longer entitled to the agreed amount was not a ground on which the registrar could refuse to record a memorandum (*Blake* v. *Midland Railway Company* [1904], 1 K.B. 503; *Cammick* v. *Glasgow Iron and Steel Company*, 4 F. 198; *Dunlop* v. *Rankin*, 4 F. 203). This proviso only deals with one of the cases where the workman is no longer entitled to the agreed amount, viz., where he has returned to work and is earning the same wages as before the accident. In all other cases—*e.g.*, if he has returned to work and is earning a less sum than before—the law is unaltered and the registrar cannot refuse to record the memorandum. But in this one case, where the man has returned to work and is earning the same wages as before the accident, the employer can insist on the matter being referred to the judge, who may make such order as he thinks fit.

Returned to work apparently means to any work, and is not limited to work in the same grade or in the service of the same employer as before.

Such terms as the judge may think just. In such cases justice would be done if the judge directed the registrar to record a memorandum of liability, and adjourned the question of amount (see *Irons* v. *Davis* [1899], 2 Q.B. 330).

Proviso (*c*). There was a similar provision in the old Act. It has been held in England that an appeal lies from a county court judge who has directed or refused to direct

Digitized by Google

any entry or rectification in the register (*Johnston* v. *Mew, Langton & Co.*, 24 T.L.R. 175). Under the old Act such appeal was to the Divisional Court, but it would now be to the Court of Appeal (see para. 4 of this schedule). In Scotland it has been held that there is no appeal from any decision of the sheriff with regard to the register (*Cochrane* v. *Traill*, 3 F. 27; *Binning* v. *Easton*, 8 F. 407; *Lockgelly Iron and Coal Company* v. *Sinclair* [1907], S.C. 3; *Hughes* v. *Thistle Chemical Company* [1907], S.C. 607).

Provisos (*d*) *and* (*e*). These provisions are intended to protect workmen who are ignorant of their rights or are otherwise imposed upon. They only apply in two cases, viz.—

(i) where there is an agreement as to the redemption of a weekly payment by a lump sum; and

(ii) where there is an agreement as to the amount of compensation payable to a person under any legal disability or to dependants.

In either of these cases the registrar, if he considers (*a*) that the amount is insufficient, or (*b*) that the agreement was obtained by fraud, undue influence, or other improper means, may by proviso (*d*) refer the matter to the judge, who may make such order as he thinks fit.

In either of these cases, if the agreement has actually been registered, the judge may, by proviso (*e*), order it to be expunged from the register if he considers it was obtained by fraud, undue influence, or other improper means (but not because of the inadequacy of the amount). But this can only be done within six months of the date of registration.

The effect of so dealing with a registered agreement or an application to register an agreement is dealt with in the next paragraph. The judge is not given power to order the payment of a greater amount than is provided for by the agreement, but only to refuse to the party asking for it the benefits of registration. But no doubt in practice a judge is able to offer to register a juster

Digitized by Google

agreement than the one before him if the parties choose to enter into it.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part. Sched. I.(10).

This paragraph is new, and must be read in conjunction with provisos (*d*) and (*e*) of para. 9. Under the old Act there was no penalty for neglecting to register a memorandum of agreement except that it did not acquire the force of a county court judgment. Under this Act it is not only through neglect that a memorandum may not be registered, but, as a result of the provisos to para. 9 of this schedule, the judge or registrar may refuse to register it for a number of different reasons (see p. 247). It would therefore be absurd if no real penalty attached to such refusal.

Two classes of agreements are dealt with in this paragraph—

1. Agreements for the redemption of a weekly payment by a lump sum. It is provided that so long as such an agreement is not registered, neither the agreement nor

Digitized by Google

payment in pursuance of it shall exempt the person liable from continuing to make the weekly payments. From this it would appear that any sum paid under such an agreement would be simply thrown away by the employer; it would seem more reasonable if such sum could be taken into account in fixing the future weekly payments, but such is apparently not the law.

2. Agreements as to the amount of compensation to be paid to a person under a legal disability or to dependants. It is provided that, so long as such an agreement is not registered, neither the agreement nor payment in pursuance of it shall exempt the person liable from the liability to pay compensation. It would appear that in this case also any sum paid under such an agreement would be thrown away, and the employer would still be liable to pay the full amount of compensation.

In agreements outside these two clauses—as, *e.g.*, an agreement to pay a weekly sum to a workman *sui juris*—the old law still applies, and the only effect of non-registration is that the agreement has not the force of a judgment, and therefore must be sued on before it can be enforced.

There is apparently no limit of time during which the memorandum must be sent to the registrar for registration (see *Cochrane* v. *Traill*, 37 S.L.R. 662).

Sched. II. (11). (11) When any matter under this Act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in or by, to or before the judge or registrar of the county court of the district in which all the parties concerned reside, or if they reside in different districts, the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

Digitized by Google

This is almost identical with para. 9 of the second schedule of the Workmen's Compensation Act, 1897, except that here "the district prescribed by rules of court" takes the place of "the district where the accident happened." This change was necessary to meet the cases of industrial diseases, and of accidents happening at sea, to which the old words are inapplicable. The rule dealing with this matter is Rule 73 (see p. 319).

Contrary intention. In the old Act a "contrary intention" appeared in para. 8 (dealing with the registration of memoranda), but in this Act it is believed that no such "contrary intention" appears anywhere.

District. In *R.* v. *Owen* ([1902], 2 K.B. 436) it was held that, where a workman resident in England is injured by an accident occurring in England, but his employer resides in Scotland, proceedings for compensation under the Workmen's Compensation Act may be taken in the county court of the district in which the accident occurred, and service of the necessary notices may be effected by registered post. In that case it was contended that as the employer did not reside in the district of any county court but in that of a sheriff court, the section could not apply and there was no court in which proceedings could be taken; but this contention was overruled.

Without prejudice to any transfer. The transfer of proceedings from one county court to another is provided for by Rule 75 (see p. 320).

(12) The duty of a judge of county courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect Sched. II. (12).

Digitized by Google

this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

This paragraph only differs from the corresponding one in the old Act in that the words "in England" have been inserted before "of an arbitrator." As it is only in England that the judge has this power of appointing arbitrators, the addition seems unnecessary.

Rules of Court. These were published June 1, 1907, and are set out in Appendix A.

Amendments to the original Rules were published on March 14, 1908, and are set out in Appendix J.

The rules are to govern the general procedure before a judge or an arbitrator appointed by him; but they only apply to proceedings before a committee or "agreed" arbitrator in matters in respect of which this Act authorises rules to be made. The only case in which the Act does so authorise rules to be made which shall apply to a committee or agreed arbitrator is under para. 9 of this schedule (dealing with memoranda of awards, ante, p. 247).

Sched. II. (13). (13) No court fee, except such as may be prescribed under paragraph 15 of the first schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

Digitized by Google

This is the same as the corresponding paragraph of the old Act, save that the exception as to a fee payable under Sched. I. para. 15 is new. Para. 15 of Sched. I. enacts that where a workman has been examined by a medical practitioner, and the employer and workman are unable to come to an agreement as to the workman's fitness for employment, then, on the application of either of them and on the payment by the applicant of a fee not to exceed £1, the registrar may refer the matter to a medical referee (see ante, p. 222).

The question was discussed under the old Act whether this paragraph meant that for all matters prior to the award the services of the county court were gratuitous or whether it merely meant that all payments of fees were postponed until after the award. The former view seems to be the natural construction of the words used, and has been adopted by the Rule Committee, and has been generally acted on.

The policy of this paragraph has been much criticised, and it has been pointed out that, although the parties to compensation arbitrations are not on the whole poorer than other county court litigants, they are treated as a privileged class, and in effect the other litigants are paying fees of which these parties reap the benefit.

Under the old Act it could be said that if a workman could not get into court without paying fees, he would be more likely to accept an agreement offering him an inadequate sum as compensation. But the provisions of this Act as to registration take away much of the force from this argument; and it is the general opinion that there is not sufficient reason for the litigants under this Act being placed in an exceptional position.

Court fees may be charged for any proceedings which are taken subsequent to the award; and regulations as to such fees have been made by the Treasury, dated May 30, 1907 (see Appendix C).

(14) Any sum awarded as compensation shall, Sched. II. (14).

Digitized by Google

unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

This paragraph deals with two distinct matters.

Firstly, with the application of the compensation money. It directs that, except in cases where it has to be paid into court, the money shall be paid over on the receipt of the person entitled to it. This was probably so under the old Act, for it was held in *Clatworthy* v. *Green* (86 L.T. 702), that the employer has no right to insist on a widow taking out letters of administration to her deceased husband's estate before paying her the compensation. The money *must* be paid into court in the case of the workman's death (Sched. I. para. 5), and the Court *may* order that it be paid into court in the case of the recipient of a weekly payment being a person under any legal disability (Sched. I. para. 7).

Secondly, with the question of the solicitor's or agent's costs. It directs that the solicitor or agent of a person claiming compensation shall not be entitled to a greater

Digitized by Google

sum by way of costs than shall be awarded to him by the committee, arbitrator, or judge as the case may be.

Solicitor or agent. The rules direct that the costs shall be taxed on the county court scales. Therefore an agent could not get any profit costs, but only his out-of-pocket expenses. The county court scale of costs is set out in Appendix K.

Of a person claiming compensation. This means either the workman or his dependants or the persons entitled to recover the expenses of his medical attendance and burial. It does not apply to the solicitor for the employer.

A lien in respect of . . . or deduct such costs. Rule 66 (p. 315) makes provisions for an order being obtained from the registrar by a solicitor or agent who is entitled to a lien or to deduct his costs from the compensation money.

On an application made. The rule governing these applications is Rule 65 (p. 314). The application is made, if the matter has been decided by a committee, "agreed" arbitrator, or county court judge, to such committee, agreed arbitrator, or county court judge. If the matter has been decided by an arbitrator appointed by the county court judge, the application can be made at or immediately after the hearing to such arbitrator; but if the application is made at a later date, it must be made to the county court judge. If the amount of compensation has been agreed upon without arbitration the application must be made to the county court judge (see Rule 65, paras. 2, 3, and 4).

Such sum to be awarded subject to taxation. In *Welland* v. *Great Western Railway Company* (16 T.L.R. 297) it was held that the arbitrator might award a lump sum as costs. The usual practice is for the tribunal to direct on what scale the costs shall be taxed. If a weekly sum is awarded it is the duty of the tribunal, or, failing it, the registrar, to fix the capital value of the sum awarded for the purposes of taxation (Rule 65, para. 9).

Digitized by Google

Scale of costs prescribed by rules of court. Rule 65, para. 8, prescribes that the scale shall be the ordinary county court scale. See Appendix K.

Sched. II.(15). (15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

This is new and should be a useful provision. It should be read in conjunction with the other provisions as to medical referees (see secs. 8 and 10 of the Act, paras. 15 and 18 of Sched. I. and para. 5 of this schedule). The Treasury orders dealing with medical referees are set out in Appendices E & G. It has been held in *Dowds* v. *Bennie & Sons* (5 F. 268) that the report of a medical referee is not binding on the tribunal. It is otherwise with a certificate.

Rule 82 deals with medical referees (p. 325).

Sched. II.(16). (16) The Secretary of State may, by order, either unconditionally or subject to such conditions as he may think fit, confer on any committee representative of an employer and his workmen as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court

Digitized by Google

and the order may exclude from the operation of provisos (*d*) and (*e*) of paragraph 9 of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

This is a new provision and enables a committee in whose favour such an order has been made to conduct an arbitration in all respects as if the matter were being dealt with in the county court.

Powers conferred exclusively on county courts or judges of county courts. The exclusive powers of a county court judge are—

(1) The power, in England, to appoint an arbitrator (Sched. II. para. 4).

(2) The power to summon a medical referee to sit with the judge as assessor (Sched. II. para. 5).

(3) The power to review a taxation of costs (Sched. II. para. 7).

(4) The power to appoint a new arbitrator (Sched. II. para. 8).

(5) The power, in the case of a memorandum of an agreement between employer and workman, where the workman has returned to work and is earning full wages, to refuse to allow such memorandum to be recorded (Sched. II. para. 9 (*b*)).

(6) The power to rectify the register (Sched. II. para. 9 (*c*)).

(7) The powers under Sched. II. para. 9 (*d*) and (*e*), to refuse to register and to expunge from the register.

(8) In addition to the above, all the duties of the registrar under the rules and under para. 9 of this schedule are "exclusive powers of the county court."

Digitized by Google

Cases where but for the order the money would . . . be paid into court—i.e., under paras. 5 and 7 of Sched. I. Some such direction was necessary, as the county court jurisdiction is excluded, and therefore there would be no proper method of dealing with the compensation money in cases within those paragraphs.

The operation of provisos (d) and (e) of para. 9. Proviso (*d*) enables the registrar to refuse to record the memorandum of an agreement for the payment of a lump sum or for the payment of compensation to persons under disability or dependants if he considers such agreement has been unfairly obtained or is inadequate in amount. Proviso (*e*) enables the county court judge, within six months of the recording of any such memorandum, to expunge it from the register if he considers such agreement has been unfairly obtained (see p. 247).

Sched. II. (17). (17) In the application of this schedule to Scotland—

(*a*) "County court judgment," as used in para. 9 of this schedule, means a recorded decree arbitral:

(*b*) Any application to the Sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the Sheriff to state a case on any question of law determined by him, and his decision thereon in such case

Digitized by Google

UNIVERSITY OF CALIFORNIA

may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the Sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords:

(*c*) Paragraphs (3), (4), and (8) shall not apply.

This only differs from the corresponding paragraph of the old Act in that an appeal to the House of Lords from the Court of Session is now expressly given. It had been held under the old Act that no such appeal lay (*Osborne* v. *Barclay* [1901], A.C. 269).

The Sheriff Courts (Scotland) Act, 1876, 39 and 40 Vic. c. 70, sec. 52: "In every case of an application, whether by appeal or petition, made to the Sheriff under an Act of Parliament which provides, or according to any practice in the Sheriff Court which allows, that the same shall be disposed of in a summary manner in the Sheriff Court without record of the defence or evidence, and without the judgment being subject to review, but which does not more particularly provide in what form the same shall be heard, tried, and determined, the application may be by petition in one of the forms as nearly as may be contained in Schedule A annexed to this Act, and the Sheriff shall appoint the application to be served and the parties to be heard at a diet to be fixed by him, and shall at that diet or at an adjourned diet summarily dispose of the matter after proof led when necessary, and hearing parties or their procurators thereon, and shall give his judgment in writing."

Para. (3), (4), and (8) deal, *inter alia*, with the appointment of arbitrators by the county court judge.

(18) In the application of this schedule to Ireland the expression "judge of the county

Sched. II.(18).

Digitized by Google

court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

Under the old Act it never became necessary to decide whether an appeal lay to the House of Lords from the Court of Appeal in Ireland, but such an appeal is now expressly given.

Para. (3) of this schedule cannot apply to Ireland. But apparently paras. (4) and (8) do apply. Para. (8) in its application to England deals with both kinds of arbitration; but in Ireland of course it could only apply to an "agreed arbitration," as the county court judge has no power to appoint an arbitrator under para. (3).

Digitized by Google

SCHEDULE III

Description of Disease.	Description of Process.
Anthrax.	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis.	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the Sec-

Digitized by Google

retary of State otherwise directs, include only the processes so specified.

This schedule refers to sec. 8 of the Act. Under that section the workman gets compensation if he contracts an "industrial disease" due to the nature of his employment. This schedule is referred to in sub-sec. 2, which enacts that if the employment is one of those mentioned in the second column of the schedule and the disease is one of those mentioned in the corresponding line in the first column, the disease shall be deemed to be due to the nature of the employment, unless the certifying surgeon certifies that in his opinion, or the employer proves as a fact that, such is not the case.

Power is given to the Home Secretary to make orders extending this list of employments and diseases. One such order has already been issued (see Appendix I.).

If the workman die after suffering from the disease, the onus is on the dependants to prove that the disease was the cause of death (*Haylett* v. *Vigor* [1908], 2 K.B. 837).

Digitized by Google

APPENDICES

Digitized by Google

Digitized by Google

APPENDIX A

THE WORKMEN'S COMPENSATION RULES, 1907

Explanatory Memorandum

These rules have been made under paragraph 12 of the second schedule to the Workmen's Compensation Act, 1906.

They are based on the rules under the Acts of 1897 and 1900, as the new Act follows the lines of those Acts so far as proceedings for settling compensation are concerned; but numerous additions and alterations are rendered necessary by the additions to and alterations in the law made by Act of 1906.

Rules 1 to 9 follow Rules 1 to 10 of the former rules; but Rule 8 is altered so as to provide, in accordance with the decision in *Field* v. *Longden*, 1902 1 K.B. 47, that arbitration shall not be requested unless a question has arisen, and that the question shall be stated in the request.

Rule 10 reproduces Rule 1 of November, 1900, as to applications by employers for arbitration.

Rules 11 and 12 follow Rules 11 and 12.

Rules 13 to 15 reproduce Rules 13 to 15, but it is provided that service shall be effected 20 days before the hearing, so as to allow sufficient time for proceedings between service and hearing, especially third party proceedings.

Rule 15, paragraph 6. It was held in *Rex* v. *Owen*, L.R. 1902, 2 K.B. 486, that where an accident occurs in England, but the employer resides in Scotland or Ireland, proceedings may be taken in the county court in England; and in reply to the argument that there were no provisions for service out of the jurisdiction, the Court held that Rule 15 as to service by registered post met the difficulty. Channell, J., pointed out that this was probably by accident, and that the words were not intended to meet such a case; but it was held that they did in fact meet it. Words are now added making the rule applicable in express terms to such a case.

Digitized by Google

Rules 16 to 18 follow Rules 16 to 18 : clause (*d*) of paragraph 5 of Rule 18 is altered, so as to bring it into accordance with the County Court Rules, Order IX., Rule 18, paragraph 4; and paragraph 6, which is new, is taken from paragraph 5 of the same rule.

Rules 19 to 26. The rules as to indemnity have been recast, as the Act provides that questions of indemnity between employers and contractors shall be settled by arbitration. Rules 19 to 28 therefore apply the County Court Rules as to third party procedure to such cases.

Where an employer claims indemnity from a third party who is not a contractor with him, the Act provides that the question shall be settled by action, or, by consent of the parties, by arbitration; and Rule 24 accordingly provides for the third party being brought in, so as to be bound by the result of the arbitration as between the workman and the employer, but not as to his liability to indemnify the employer, unless the parties consent to have that question settled by arbitration.

Rule 25 provides for third party procedure where the employer applies for arbitration.

Rule 26 reproduces Rule 28 as to claims to indemnity by one respondent against another. It was held in *Appleby* v. *Horseley Company*, 68 L.J. Q.B. 894, that where a respondent intends to claim indemnity from another respondent he must give notice as provided by Rule 19. The word "shall" is accordingly substituted for "may" in paragraph 1 of Rule 26.

Paragraph 2 of the old Rule 28 is omitted, as it does not necessarily follow that a sub-contractor who is liable to pay compensation is also liable to indemnify the principal; the accident may have been caused under circumstances giving him a claim to be indemnified by the principal.

Rule 27 follows Rule 24.

Rule 25 of the old Rules is transposed, so as to put all the provisions as to medical referees together.

Rules 28 to 32 reproduce Rules 26 to 30.

The last paragraph of Rule 29 is altered, as the new Act provides that the judge of the County Court, and not the High Court as in the Act of 1897, shall appoint a new arbitrator in case of death, &c.

Rule 31 of the old Rules has been omitted as unnecessary.

Rule 33 reproduces Rule 32.

Rules 33, 34, and 34A of the old Rules, as to costs, have been transposed.

Digitized by Google

Rule 34 reproduces Rule 85, but provides that the judge shall take a note of any point of law, without being requested to do so, as the Court of Appeal have experienced difficulties in ascertaining what has actually been decided in cases in which notes have not been taken.

Rules 36 and 37 of the old Rules, as to appeals, have been transposed.

Rule 35 deals with proceedings against insurers, as to which the new Act makes provisions differing from those in the Act of 1897. Section 5 of the Act provides that the rights of a bankrupt employer against insurers in respect of his liability to a workman shall vest in the workman, and that the insurers shall have the same rights and be subject to the same liabilities as the employer, but only to the extent of their liability to the employer.

Paragraph 2 provides for examination of a bankrupt employer as to his contracts with insurers, reproducing Rule 58 of the old Rules.

Rule 36 makes special provisions as to masters, seamen, apprentices, and pilots, who are brought within the Act by section 7. It also provides for the name in which the owners of a ship may be sued, and for the service of documents.

Rule 37 provides for the detention of foreign ships under section 11. This clause is a repetition, as to cases of compensation under the Act, of the Shipowners' Negligence (Remedies) Act, 1905, 5 Edw. c. 10, which applies to cases of injuries caused by negligence. It is therefore provided that applications shall be made under the Rules under that Act.

No such rules have yet been made, and pending the issue thereof Rule 37 provides how applications shall be made; providing that an application may be made, as enacted in section 11, to any Court; that the judge may require an undertaking as to damages before granting an application; and that, while an application may be made *ex parte*, the applicant shall where practicable give notice to the agent or solicitor of the owners of the ship, and that the judge may accept a solicitor's undertaking to give security instead of making an order for detention; such undertaking to be enforceable by attachment, as in Admiralty actions.

Rule 38. The Shipowners' Negligence (Remedies) Act, 1905, enables an employer who has paid compensation or has had a claim made on him under the Workmen's Compensation Act, and who claims to be indemnified by the owners of a foreign ship, to obtain an order of detention under that Act. The Workmen's Compensation Act does not contain a corresponding provision; but Rule 38 provides for applications for such orders.

Rule 39 contains special provisions as to proceedings in case of injuries caused by industrial diseases.

Digitized by Google

Rule 40 is framed on the view that paragraph 8 of schedule 1 to the Act applies to the appointment of an arbitrator by the judge on the death, etc., of an arbitrator agreed on by the parties. It is taken from a former County Court Rule as to the appointment of arbitrators under the Agricultural Holdings Act.

Rules 41 to *48* are founded on the old Rules 38 to 45 as to the record of agreements and awards in the county court register; but they are considerably altered in detail, in consequence of the new provisions contained in paragraph 9 of the second schedule to the Act as to notice to the parties interested before a memorandum is recorded, and objections by employers to the recording of agreements where injured workmen have returned to work.

Rule 49 regulates the procedure where the registrar refers a memorandum of an agreement to the judge under paragraph 9 of the second schedule, and provides that the registrar may make inquiries as to whether agreements presented for registration are such as should be recorded.

Rule 50 regulates the procedure for the removal of an agreement from the register under paragraph 9 of the second schedule.

Rules 46 and 47 of the old Rules, as to costs of solicitors or agents, have been transposed.

Rule 51 reproduces the old Rule 48.

Rule 52 provides for the summoning of medical referees as assessors under paragraph 5 of the second schedule. It is based on the County Court Rules as to summoning assessors in ordinary actions.

Rule 53 reproduces the old Rule 25 as to references to medical referees.

Rule 54 deals with references to medical referees under paragraph 15 of the first schedule.

Rules 49, *49A*, *and 49B* of the existing Rules are transposed.

Rule 55 regulates applications for suspension of the right to compensation, or to take proceedings, where a workman refuses to submit to examination. It is based on Rule 50 of the old Rules.

Rules 51 to 58 of the old Rules are omitted, the provisions as to insurers having been altered by the new Act.

Rule 56 deals with payment into court and investments, &c., of money payable in case of death under paragraph 5 of schedule 1. It is based on the old Rule 59. Paragraph 10 provides for the payment of weekly or other periodical payments by post; it is based on the County Court Rules, Order IX., Rule 22.

Rule 57 deals with payment of weekly sums payable to persons under disability into court under paragraph 7 of schedule 1.

Digitized by Google

Rule 58 regulates the procedure on applications for the variation of orders under paragraph 9 of schedule 1.

Rule 59 deals with the investment and application of lump sums payable in redemption of weekly payments under paragraph 17 of schedule 1.

Rule 60 deals with the subject of weekly payments to workmen who cease to reside in the United Kingdom. The original proposal in the Bill was that such workmen should, if the incapacity was permanent, receive a lump sum; but it is now provided that they shall be entitled to their weekly payments, on proof of identity and continuance of disability, in accordance with rules of court. The rule, therefore, provides how a certificate of incapacity is to be obtained from a medical referee; and then provides that a copy of the certificate, and a certificate of identity, shall be given to the workman, and that he shall forward every three months to the registrar certificates of continuance of incapacity and of identity, verified by declaration before a person authorised to administer oaths in the place where the workman resides.

Rules 61 to 64 deal with costs, and reproduce 33, 34, and 34A, of the old Rules.

Rules 65 and 66 reproduce Rules 46 and 47 as to the costs of solicitors or agents acting for parties claiming compensation.

Rules 67 to 69 reproduce Rules 49, 49A, and 49B, as to proceedings for the enforcement of awards by execution, judgment summons, or otherwise; and contain special provisions applicable to the case of partners.

Rule 70 is new.

Paragraph 1 is in accordance with the decision in *Mountain* v. *Parr*, L.R. 1899, 1 Q.B. 805, that a new trial cannot be granted in an arbitration.

But there ought to be power, where an award or order has been obtained by fraud or improper means, or a person who is not really a dependant has been awarded compensation, or a person who is a dependant has been excluded, to re-open the matter; and as paragraph 9 of the second schedule gives such power where an agreement has been improperly obtained, while section 11 of the Arbitration Act of 1889 gives the High Court power to set aside an award improperly obtained, paragraph 2 of Rule 70 gives a like power to the judge to set aside an award obtained by fraud or improper means; paragraph 3 providing how application shall be made, while paragraph 4 limits the time for application, the time being taken from schedule 2, paragraph 9 (*c*), and section 2 (1) (*b*) of the Act.

Rules 71 and 72 reproduce Rules 36 and 37 as to appeals.

Digitized by Google

Rule 73 prescribes the courts in which proceedings may be taken, in accordance with paragraph 11 of schedule 2.

Rules 74 and 75 correspond with the existing Rules 60 and 61.

Rule 76 provides for the transfer of money from one court to another, under paragraph 6 of the first schedule or otherwise.

Rules 77 and 78 reproduce Rules 62 and 63.

Rule 79 provides who shall be made a party as representing the Crown in cases arising out of accidents to workmen in the service of the Crown, and for the service of documents in such cases.

Rules 80 and 81 reproduce Rules 64 and 65.

Rule 82 provides that references to medical referees shall be made in accordance with regulations made by the Secretary of State and the Treasury; that such regulations shall have effect as rules of court; that registrars shall act in accordance with any regulations as made requiring references under paragraph (*f*) of sub-section 1 of section 8 to be made through the county court; and that the registrar shall keep and forward records of references to medical referees in accordance with such regulations.

Rules 83 and 84 reproduce Rules 66 and 67.

The forms have been revised and re-arranged, and many new ones added: the principal points to be noted are—

(1) that the forms of request are altered, and require the questions which have arisen to be stated; and

(2) that the form of award in case of death provides that the judge may order sums apportioned to a widow to be invested and paid out to her in weekly or other periodical payments, as contemplated by paragraphs 5 and 9 of the first schedule, instead of being paid to her in a lump sum; and the form reserves liberty to apply as to sums allotted to dependants, as it may often be desirable to vary the original award, as contemplated by paragraph 9 of the first schedule.

The forms also leave space for the introduction of recitals as to the findings on which the award proceeds.

June, 1907.

Digitized by Google

THE WORKMEN'S COMPENSATION RULES, 1907

DATED THE FIRST DAY OF JUNE, 1907

The Workmen's Compensation Rules, 1898, the Workmen's Compensation Rules, 1899, and the Workmen's Compensation Rules, 1900, are hereby annulled, but shall continue to apply to cases where the accident happened before the commencement of the Workmen's Compensation Act, 1906, except so far as the provisions of that Act and of these Rules relating to references to medical referees and proceedings consequential thereon apply to those cases. Former rules, how far annulled. 6 Edw. 7. c. 58

Preliminary.

1. (1) The following Rules shall have effect under the Workmen's Compensation Act, 1906 (in these Rules referred to as the Act), with reference to any matter or proceeding for the regulation of which Rules of Court may be made under the Act, and generally for carrying the Act into effect so far as it affects the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator. Effect, short title, commencement, and construction of Rules. 6 Edw. 7. c. 58.

(2) These Rules may be cited as the Workmen's Compensation Rules, 1907, and shall come into operation on the first day of July, one thousand nine hundred and seven; but they shall not, except so far as they relate to references to medical referees and proceedings consequential thereon, apply to any case where the accident happened before the commencement of the Act.

(3) Expressions used in these Rules shall have the same meaning as the same expressions used in the Act.

(4) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament. 52 & 53 Vict. c. 63.

(5) These Rules shall also be read and construed with the County Court Rules, 1903, and the County Court Rules of subsequent date amending the same; and any Order and Rule referred to by number in these Rules shall mean the Order and Rule so numbered in the

Digitized by Google

County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be.

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

Parties to arbitration.

2. (1.) When application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and, subject to these Rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents."

Order III., Rule 2.

(2.) In any case in which both the principal as defined by the Act and a contractor with him are alleged to be liable to pay compensation under the Act, Order III., Rule 2, as to joinder of parties, shall apply.

Joinder of applicants. Order III., Rule 1. Order XLIV., Rules 18, 19.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III., Rule 1; and that Rule, and Rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration.

Application by dependants.

4. (1.) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants may be made by the legal personal representative, if any, of the deceased workman on behalf of such dependants, or by the dependants themselves; and in either case the particulars to be filed as hereinafter mentioned shall contain particulars as to the dependants on whose behalf the application is made.

(2.) Provided, that if there is any conflict of interest between the dependants themselves, or if any dependants neglect or refuse to join in an application, the application may be made by or on behalf of some only of such dependants, the other dependants in either case being named as respondents.

(3.) In the construction of this rule the term "dependants" shall include persons who claim or may be entitled to claim to be dependants, but as to whose claim to rank as dependants any question arises.

Application by dependants under Act, Sched. 1, par. 8, where amount of compensation agreed or ascertained.

5. (1.) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative, if any, of the deceased workman on behalf of the dependants or any of them, or by such dependants

Digitized by Google

or any of them, against the other dependants, and the persons claiming or who may be entitled to claim to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative, if any, of the deceased workman, and the dependants, and such of the persons claiming or who may be entitled to claim to be dependants as are not applicants.

(2.) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3.) The employer, if made a respondent, may pay the amount of compensation in his hands into court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed.

(4.) (See amended rules, Appendix J.)

Parties to arbitration as to sum payable for medical attendance and burial. Act, Sched. 1, par. 1 (*a*) (iii).

6. (1.) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative, if any, of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Apportionment of such sum.

(2.) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct.

Parties under disability and partners; representation of parties having the same interest.

7. The provisions of Rules 7 and 8 of Order III., as to parties suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act.

Application for Arbitration.

Request for arbitration.

8. (1.) An application for the settlement of any matter by arbitration shall not be made unless and until some question has arisen between the parties, and such question has not been settled by agreement.

Digitized by Google

(2.) Where any question has arisen and has not been settled by agreement, an application for the settlement of the matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall state concisely the question which has arisen, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned.

Particulars.

(3.) Particulars shall be appended or annexed to the request containing—

(*a*) A concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims;

(*b*) The date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission; and

(*c*) The full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

Forms of request and particulars. Forms 1 to 11.

9. (1.) The request and particulars shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

(2.) A copy of the notice of the accident shall be appended or annexed to the particulars. If this rule cannot be complied with, the reason for the omission shall be stated in the particulars.

Application by employer.

10. (1.) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a request for arbitration in accordance with Rule 8, to which the workman, or the legal personal representative, if any, and the persons claiming or who may be entitled to claim to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made shall be respondents.

(2.) Particulars shall be appended or annexed to the request, containing—

(*a*) a concise statement of the circumstances under which the application is made;

(*b*) a statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability;

(*c*) a statement of the matters which the applicant desires to have settled by arbitration; and

Digitized by Google

(*d*) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor.

Copies for judge and respondents.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served.

Where applicant is illiterate.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk.

Proceedings on Arbitration before Judge.

Fixing Day and Place for Arbitration.

Fixing day and place for arbitration.

18. (1.) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself) appoint a day and hour for proceeding with the arbitration. Such day shall be so fixed as to allow the copies of the request and particulars to be served on the respondents at least twenty clear days before the day so fixed.

(2.) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the court is held.

(3.) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the court attending at such place.

(4.) If such direction is given before the notices mentioned in the next following rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5.) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held.

Notice of Day Fixed.

Notice to parties.

14. (1.) On the day for proceeding with an arbitration being fixed the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for

Forms 12, 13.

Digitized by Google

service on the respondents, together with notices [signed by the registrar himself, and] (see amended rules, Appendix J) under the seal of the court, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient.

Notice where employer is applicant.

Form 18.

(2.) Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation.

Service on Respondents.

Service on respondents.

15. (1.) The copies and notices mentioned in the last preceding rule shall be served on the respondents at least twenty clear days before the day fixed for proceeding with the arbitration.

(2.) The copies and notices mentioned in the last preceding rule may be served—

(*a*) By a bailiff of a court;

or, at the request of the applicant or his solicitor,

(*b*) By the applicant, or some clerk or servant in his permanent and exclusive employ; or

(*c*) By the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve such copies and notices, who might be so employed to serve a writ in an action in the High Court.

Act, sect. 2, sub-sects. 3, 4.

(3.) Service may be effected either in accordance with the rules as to service of default summonses, or by registered post in accordance with the provisions of sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service.

Where service effected otherwise than by bailiff.

(4.) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant. The applicant shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 37 in the Appendix to the County Court Rules, with such variations as the circumstances of the case may require.

Digitized by Google

(5.) Where a document is served by post it shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such document it shall be sufficient to prove that the same was properly addressed and registered. Service by post.

(6.) Where the accident occurred in England, and any respondent resides in Scotland or Ireland, service on such respondent may be effected in accordance with this rule, and service so effected shall be deemed to be sufficient. Service on respondent in Scotland or Ireland.

Stay of Proceedings.

16. Where several requests for arbitration are filed by different applicants against the same respondent in the same court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII., Rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration; and Rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly. Stay of proceedings in other arbitrations to abide decision as to liability in selected arbitration. Order VIII., Rules 2–6.

Answer by Respondent.

17. (1.) If any respondent desires to disclaim any interest in the subject matter of an arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident, or of death, disablement, or suspension, was not given as required by the Act, or that the claim for compensation was not made within the time limited by the Act, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability. Answer by respondent. Form 14.

(2.) The respondent shall with such answer file copies thereof for the applicant and the judge, and one copy for each of the other respondents; and the registrar shall within twenty-four hours after

Digitized by Google

receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3.) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4.) Provided, that in case of non-compliance with this rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should pursuant to this rule have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer.

Answer where employer is applicant.

(5.) The provisions of this rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation.

Submission to award or Payment into Court by Respondent.

Submission to award or payment into court by respondent. Form 15.

18. (1.) Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for proceeding with the arbitration,

(*a*) Where the application is made by an injured workman, file with the registrar a notice that the respondent submits to an award for the payment of a weekly sum, to be specified in such notice; or,

(*b*) Where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, pay into court such sum of money as the respondent considers sufficient to cover his liability in the circumstances of the case.

Forms 16, 17.

(2.) The registrar shall within twenty-four hours from the time of any notice filed or payment made pursuant to the last preceding paragraph send notice thereof (with, where a notice is filed, a copy of such notice) to the applicant, and to the other respondents (if any).

Acceptance of weekly payment offered. Form 18.

(3.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice according to the form in the

Digitized by Google

Appendix, stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of sum paid into court. Form 18.

(4.) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, according to the form in the Appendix, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if weekly payment offered or sum paid in is accepted.

(5.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply:—

(*a*) Where the respondent submits to an award for the payment of a weekly sum, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly;

(*b*) Where the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned; and

(i) If the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application;

(ii) In any other case the arbitration may proceed as between the applicant and the other respondents.

Costs payable by respondent.

(*c*) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents, or any of them, may have

Digitized by Google

properly incurred before the receipt of notice of submission to an award or payment into court, including, if the judge on consideration of the facts of the case shall so order, any items which might have been allowed by order of the judge, at the hearing of the arbitration.

Form 18.

(*d*) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance, according to the form in the Appendix; or where the time of filing notice of submission to an award or the time of payment into court by the respondent does not permit of notice of acceptance being given, the applicant or any respondent may apply for such costs without giving such notice.

Acceptance at any time before arbitration opened.

Costs.

(6.) Where any party has not given notice of acceptance in accordance with this rule, he may nevertheless accept the weekly payment which the respondent has submitted to pay, or the sum paid into court, at any time before the arbitration is called on and opened subject to the payment of any costs which may have been reasonably incurred by the respondent since the date of filing notice of submission or the date of payment into court, and which may be allowed by the judge; and the judge may order any costs so allowed to be paid by the party so accepting, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

(7.) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party.

Submission to award or payment into court where employer is applicant.

(8.) The provisions of this rule shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration admits liability to pay compensation.

Digitized by Google

Notice to Parties against whom Indemnity claimed under Section 4.

Notice of claim to indemnity under sect. 4.

19. Where a respondent claims to be entitled under section 4 of the Act to indemnity against any person not a party to the arbitration, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, file a notice of his claim according to the form in the Appendix; and the registrar shall seal such notice and deliver it to the respondent, who shall serve the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under Rules 14 and 15, upon the person against whom such claim is made; and the provisions of paragraphs 2 to 6 of Rule 15 shall apply to such service.

Form 23.

Appearance by third party.

20. If any person served with a notice under the last preceding rule (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, or his own liability to such respondent, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise, and his own liability to indemnify the respondent to the extent claimed in the notice served on him by the respondent.

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day herein-before mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs and otherwise, as may be just.

Proceedings on default of appearance by third party.

21. If the third party fails to appear on the day mentioned in Rule 20, or, if the proceedings are adjourned under that rule, on the day to which the proceedings are adjourned, then if the arbitration results in an award in favour of the applicant or the arbitration is finally decided in favour of the applicant otherwise than by an award, the judge may on the application of the respondent make such award as the nature of the case may require in favour of the respondent against the third party: but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him.

Provided, that the judge may set aside or vary any award made against the third party under this rule upon such terms as may be just.

Digitized by Google

Application for directions. What directions may be given.

22. The third party or the respondent may apply before or at the arbitration to the judge for directions: and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be determined as to the liability of the third party to make the indemnity claimed, in whole or in part, order the question of such liability as between the third party and the respondent giving the notice to be determined at or after the arbitration, and if not so satisfied may make such award as the nature of the case may require in favour of the respondent giving the notice against the third party: or the judge may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the award in the arbitration.

Costs.

23. The judge may decide all questions of costs as between a third party and the other parties to the arbitration, and may order any one or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require.

Notice to Parties against whom Indemnity claimed under Section 6, or otherwise.

Notice of claim to indemnity under sect. 6, or otherwise than under sect. 4. Form 23.

24. (1.) Where a respondent claims that if compensation is recovered against him he will be entitled under section 6 of the Act, or otherwise than under section 4, to indemnity against any person not a party to the arbitration, he shall file and serve a notice of his claim in accordance with Rule 19.

If person served makes default in appearing, he is to be deemed to admit validity of award against respondent.

(2.) If any person served with a notice under the last preceding paragraph (herein-after called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise.

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day herein-before mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs or otherwise, as may be just.

Digitized by Google

(3.) The third party or the respondent may apply before or at the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper. Application to judge for directions as to conduct of arbitration.

(4.) If the third party obtains leave to resist the claim of the applicant against the respondent, the provisions of Rule 28 as to costs shall apply. Costs.

(5.) Nothing in this Rule shall empower the judge to decide (otherwise than by consent) any question as to the liability of the third party to indemnify the respondent, or to make any award in favour of the respondent against the third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent. Judge how far empowered to decide questions as to liability of third party.

(6.) Provided, that with the consent of the respondent and the third party,

(*a*) If the arbitration results in an award in favour of the applicant, or is finally decided in favour of the applicant otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him; or

(*b*) The judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.

(*c*) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require.

Digitized by Google

Third Party Procedure where Employer is Applicant.

Third party procedure where employer is applicant.

25. The provisions of Rules 20 to 24 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity against any person not a party to the arbitration.

Claim to Indemnity as between Respondents.

Claim to indemnity as between respondents.

26. (1.) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice shall be issued and the like procedure shall thereupon be adopted for the determination of questions between the respondents as might be issued and adopted against such other respondent if such last-mentioned respondent were a third party.

(2.) Nothing herein contained shall prejudice the rights of the applicant against any respondent.

Procedure on Arbitration.

Procedure in arbitration.

27. (1.) Subject to the special provisions of these Rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the County Court by plaint and summons in the ordinary way, and determined by the judge without a jury; and the statutory provisions and rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly; and in the application of such provisions and rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively.

Burden of proof of facts not admitted.

(2.) Provided, that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed.

Award.

Award.

Form 24.

28. (1.) The award of the judge on any arbitration shall be prepared and settled by the registrar, and shall be signed by the judge, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with Rule 7 of Order XXIII.; and such award shall be enforceable in the same manner as a judgment or order of the court.

Order XXIII., Rule 7.

(2.) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission.

Digitized by Google

Proceedings before Arbitrator appointed by Judge.

Appointment of Arbitrator by Judge.

29. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply:— Appointment of arbitrator by judge.

(*a*) If with respect to any court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(*b*) If with respect to any court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.

(*c*) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these Rules.

(*d*) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing, under his hand, and filed in the court, an arbitrator to settle such matter.

(*e*) In case of the death or refusal or inability to act of an arbitrator appointed under this rule, the judge may, on the application of any party, appoint a new arbitrator in accordance with this rule.

Fixing day for Arbitration.

30. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with Rule 18, and the provisions of that rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the court is held, the day appointed for the arbitration shall, if possible, be one on which the court or other suitable accommodation in the court-house will be available for the arbitration. Fixing day and place for proceedings before arbitrator.

Digitized by Google

Procedure before Arbitrator.

Procedure before arbitrator.

31. (1.) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to Rule 14, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these rules shall apply and the officers of the court shall act accordingly, with the substitution of the arbitrator for the judge.

(2.) Provided that—

(*a*) In any case coming within the provisions of paragraph 5 (*a*) or paragraph 5 (*b*) (i) of Rule 18, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

(*b*) Any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge.

Submission of Question of Law by Committee or Arbitrator to Judge.

Submission of question of law by committee or arbitrator to judge.
Act, Sched. 2, par. 4.

32. (1.) When a committee or an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case.

Statement of case.

(2.) The case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of the case the judge and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Fixing day for hearing.
Form 25.

(3.) The case shall be signed by the chairman and secretary of the committee or by the arbitrator, and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and

Digitized by Google

instruct the registrar to give notice thereof forthwith to the parties. The day shall be so fixed as to allow notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

Copies of case.

(4.) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Power of judge on hearing of case.

(5.) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of his decision to the committee or arbitrator, for them or him to proceed thereon in accordance with the decision; or if the decision of the judge on the question submitted to him disposes of the whole matter he may himself make an award in the arbitration in accordance with such decision.

Re-statement.

(6.) The judge may remit the case to the committee or arbitrator for re-statement or further statement.

Costs of special case.

(7.) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these Rules as to such costs shall apply accordingly.

Appearance of Parties in Arbitration.

Appearance of parties.

88. (1.) A party to any arbitration under the Act may appear—

(*a*) In person:

(*b*) By any solicitor who would be entitled to appear for such party in an action in the County Court:

(*c*) By counsel:

Or, by leave of the judge or arbitrator, a party may appear—

(*d*) By a member of his family:

(*e*) By a person in the permanent and exclusive employment of such party.

(*f*) In the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation:

(*g*) By any officer or member of any society or other body of persons of which such party is a member or with which he is connected; or

(*h*) Under special circumstances, by any other person.

Digitized by Google

(2.) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as may be allowed by the judge or arbitrator: Provided that nothing in these rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid.

Duty of Judge as to taking Notes.

Note to be taken of question of law raised, &c. and copy furnished.

34. At the hearing of any arbitration or special case the judge shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case: and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not.

Proceedings against Insurers under Section 5.

Where rights of bankrupt, &c. employer against insurers vest in workman under sect. 5.

35. (1.) Where under section 5 of the Act the rights of an employer against any insurers under a contract entered into by the employer with the insurers in respect of any liability under the Act to any workman are transferred to and vest in the workman, the following provisions shall have effect.

Examination of employer as to insurance.

(2.) Where a workman who is or claims to be entitled to compensation from an employer to whom section 5 of the Act applies is unable to ascertain whether such employer has entered into a contract with insurers in respect of his liability, he may apply to the court on affidavit intituled in the matter of the Act, and setting forth the facts on which the application is made, for an order for the examination of the employer, and the court may make an order accordingly; and the

Order XXV., Rules 71, 72.

provisions of Order XXV., Rules 71 and 72, shall apply in the same manner as if the employer were a debtor liable under a judgment or order.

Provisions as to arbitration.

Form 11.

(3.) The provisions of the Act and these Rules as to the settlement of matters by arbitration shall with the necessary modifications apply to the settlement by arbitration of any question as to the liability of the insurers or the amount of their liability.

Masters, Seamen, Apprentices and Pilots. Section 7.

Masters, seamen, apprentices, and pilots.

36. (1.) In the application of the Act and these Rules in the case of masters, seamen, and apprentices to the sea-service and apprentices in the sea-fishing service, who are workmen within the meaning of the

Digitized by Google

Act, and who are members of the crew of any such ship as in section 7 of the Act mentioned, and to pilots when employed on any such ship, the following provisions shall have effect.

(2) In the case of the death of a master, seaman, apprentice, or pilot, the claim for compensation shall state the date at which news of the death was received by the claimant. Claim for compensation in case of death.

(3) The claim for compensation on behalf of dependants of a master, seaman, apprentice, or pilot lost with his ship, and the particulars appended or annexed to the request for arbitration, shall state the date at which the ship was lost or is deemed to have been lost. Where master, &c., lost with ship.

(4) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require. Forms of request for arbitration. Forms 6, 7.

(5) In any document, notice, or proceeding it shall be sufficient to describe the owners of the ship as "the owners of the ship "; and the provisions of the County Court Rules as to disclosure of the names of partners shall with the necessary modifications apply to the disclosure of the names of such owners. Description of owners in documents and proceedings.

(6) Subject to the provisions of paragraph (*a*) of section 7 of the Act as to service of the notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner or manager for the time being of the ship, or (except where the master is claiming compensation) on the master of the ship ; and section 696 of the Merchant Shipping Act, 1894, sub-section (1), shall apply to service on the master of the ship, and where the master is claiming compensation, and there is no managing owner of the ship, service may be effected in accordance with paragraph (*c*) of the said sub-section. Service of documents and proceedings. Merchant Shipping Act, 1894, ss. 59, 696.

Detention of Ships. Section 11.

37. (1.) An application for an order for the detention of a ship under section 11 of the Act shall be made in accordance with the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905; and those rules, with the necessary modifications, shall apply accordingly. Application for detention of ship. Act, s. 11. 5 Edw. 7. c. 10.

(2.) Subject to any such rules as in the last preceding paragraph mentioned, an application for an order for detention shall be made in accordance with the following rules.

(3.) The application may (subject to the provisions of paragraph 9 of this rule) be made *ex parte* either in or out of court, according to the form in the Appendix, and shall be supported by affidavit or other Application and evidence. Form 26.

Digitized by Google

evidence showing, to the satisfaction of the judge, the grounds on which the application is made.

Undertaking as to damages. Form 27.

(4.) The judge may, before granting the application, require the applicant to give or procure an undertaking, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay.

Order and execution thereof. Form 28.

(5.) An order for detention shall specify the amount for which security shall be given, and shall be according to the form in the Appendix, and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of the execution of the order apparently in charge of the ship, or, if there is no person apparently in charge, shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer.

Rescission of order.

(6.) The judge may at any time on good cause shown rescind any order for detention made by him.

Security. County Courts Act, 1888, ss. 108, 109. Order XXIX. Form 29.

(7.) The provisions of sections one hundred and eight and one hundred and nine of the County Courts Act, 1888, and of Order XXIX., as to security, shall with the necessary modifications apply to the giving of security; and the approval by the judge of any security shall be signified in writing signed by him. Where security is given by bond, such bond shall be according to the form in the Appendix.

Release. Form 30.

(8.) If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved, or in any other case if the applicant so requires, the judge shall deliver to the party applying for the same an order according to the form in the Appendix, directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith.

Notice of application to agent or solicitor of owner.

(9.) (*a*) With respect to notice of application for an order for detention, and to undertakings to give security, the following provisions shall have effect.

(*b*) Notwithstanding anything in this rule contained, a person intending to apply for an order for detention shall, if the name and address of an agent in England for the owners of the ship, or of a solicitor in England authorised to act for the owners, agent,

Digitized by Google

master, or consignee of the ship, are known to him, give to such agent or solicitor, by post, telegram, or otherwise, such notice of the time and place at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case.

Undertaking by solicitor. Form 30A.

(c) If a solicitor in England represents that he is authorised to act for the owners, agent, master, or consignee of the ship, and signs an undertaking according to the form in the Appendix, to put in or give security for an amount agreed on between the parties or fixed by the judge, then, on such undertaking being filed in court,

(i) the judge may in his discretion refuse to make an order for detention; or

(ii) if an order for detention has been made, but not executed, the judge may rescind it; or

(iii) if an order for detention has been made and executed, the judge may deliver to the party applying for the same an order of release in accordance with paragraph 8 of this rule.

Filing of undertaking.

(d) An undertaking given in accordance with the last preceding paragraph shall be filed in the court to which the application for an order for detention is made or is intended to be made.

Attachment for non-compliance with undertaking.

(e) A solicitor who fails to put in or give security in pursuance of his undertaking to do so shall be liable to attachment.

Particulars to state circumstances under which persons giving security are made respondents. Form 8.

(10.) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security, the request for arbitration and particulars shall state concisely the circumstances under which the persons giving security are made respondents.

Transmission of documents, &c., where proceedings commenced in court other than that in which order for detention made or applied for.

(11.) Where proceedings are commenced in any court in England, Scotland, or Ireland, other than that in which the order for detention was made or applied for, the registrar of the court in which the order was made or applied for shall on request transmit by registered post to the registrar of the court in which the proceedings are commenced all original documents filed in the matter, and a certified copy of all records made with reference to the matter, and any bond by way of security given in the matter, and shall transfer to such last mentioned court any money paid into court by way of security in the matter; and the provisions of Order VIII., Rule 9, as to the costs of copies and the costs of transmission shall apply to any transmission under this paragraph.

Digitized by Google

Costs of application for order for detention.

(12.) The costs incurred by any party in relation to an application for an order of detention and any proceedings consequent thereon may in any subsequent proceedings by way of arbitration be allowed as costs of the arbitration.

Proceedings where Employer who has paid Compensation, or from whom Compensation is claimed, desires to obtain Order for Detention of Ship. 5 Edw. 7. c. 10.

Application by employer for detention of ship. 5 Edw. 7. c. 10.

38. Where an employer who has paid compensation or against whom a claim for compensation has been made under the Act desires to make an application for the detention of a ship under the Shipowners' Negligence (Remedies) Act, 1905, the provisions of the last preceding rule shall apply, subject to the rules for the time being in force under the last-mentioned Act, and to the following modifications, viz.:

Forms 31, 32, 33.

(i) An application for an order for detention, an order for detention, and a bond given by way of security, shall be according to the forms in the Appendix.

Form 23.

(ii) Where proceedings by way of arbitration for the recovery of compensation are taken against the employer, he may bring in the persons giving security as third parties in accordance with Rule 24, and the provisions of that rule shall apply accordingly.

(iii) Where such proceeding are taken against the employer in any court other than that in which the order for detention was made or applied for, and the employer brings in the persons giving security as third parties, the provisions of paragraphs 11 and 12 of the last preceding rule shall apply.

(iv) Where the employer has paid compensation in respect of the injury, all questions as to his right to indemnity against the persons giving security, and as to the amount of such indemnity, shall in default of agreement be settled by action, or, by consent of the parties, by arbitration in accordance with the Act and these Rules; and if such questions are settled by arbitration, the provisions of paragraphs 10 to 12 of the last preceding rule shall apply.

Industrial Diseases.

Application of Act and rules to cases of industrial diseases.

39. (1.) In the application of the Act and these Rules in the case of a workman disabled by or suspended on account of his having contracted any disease mentioned in section 8 of and the third schedule to the Act, or whose death has been caused by any such disease, the following provisions shall have effect.*

* Rule 39 (1) is annulled and an amended rule substituted for it by the Rules of March 14, 1908 (see post, Appendix J).

Digitized by Google

(2.) The notice required by section 2 of the Act shall state the date and cause of the disablement or suspension; and where a certificate of disablement or a certificate of or relating to suspension has been given, a copy thereof shall on demand be furnished to the employer. Notice of disablement.

(3.) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require. Forms of request for arbitration. Forms 9, 10.

(4.) (*a*) If the employer desires to add any other employer as a party to the arbitration, pursuant to proviso (ii) to paragraph (*c*) of subsection (1) of section 8 of the Act, he shall file with the registrar in duplicate a notice according to the form in the Appendix: and thereupon the registrar shall make an order adding such other employer as a respondent, and may if necessary adjourn the hearing of the arbitration for such time as may be necessary to enable such other employer to be duly served. Adding respondent under Act, s. 8 (1) (*c*) (ii). Forms 19, 20.

(*b*) Where a respondent is added under the last preceding paragraph, copies of the notice pursuant to which he is so added, and of the order, shall be sent by post to the applicant and the original respondent; and the like copies, together with a copy of the applicant's request and particulars, and of the notice served on the original respondent under Rules 14 and 15, and a notice according to the form in the Appendix as to the place at which and the day and hour on and at which the arbitration will be proceeded with, shall be issued by the registrar for service on the added respondent; and such copies and notices shall be served on the added respondent in accordance with Rule 15, with the substitution of the original respondent for the applicant. Notice of order, and service on added respondent. Forms 21, 22.

(*c*) The provisions of these Rules as to respondents shall apply to the added respondent from the date of service on him as if he had been originally made a respondent. Application of rules to added respondent.

(*d*) At the hearing of the arbitration the judge or abitrator shall decide all questions as between the applicant and the original and added respondents, and may make such award as may be necessary effectively and completely to adjudicate upon and settle all the questions involved in the arbitration, and may make such order as to costs as between the applicant and the respondents, and as between the respondents themselves, as may be just. Procedure at arbitration. Costs.

(5.) Where the employer claims under proviso (iii) to paragraph (*c*) of subsection (1) of section 8 of the Act to be entitled to contribution from any other employer, he may bring in such other employer as a third party in accordance with Rules 19 to 23, 25 and 26; and the provisions of those rules shall with the necessary modifications apply to any such claim to contribution in like manner as they apply to claims to indemnity. Claim to contribution under Act, s. 8 (1) (*c*) (iii). Form 23.

Digitized by Google

Appointment of Arbitrator by Judge in place of Arbitrator agreed on by the Parties under Schedule II., Paragraph 8.

Application for appointment.
Form 34.

40. (1.) In case of the death or refusal or inability to act of an arbitrator agreed on by the parties, any party to the arbitration who desires to make an application to the judge to appoint a new arbitrator shall apply in writing to the registrar to fix a time and place for the hearing of such application.

Fixing of hearing by registrar.

(2.) The registrar shall fix the hearing of the application before the judge for any court appointed to be held within fourteen days from the date of the application to the registrar, but so that he shall not, except by consent, fix the hearing for a day less than seven days from the date of the application.

Fixing of hearing by judge.

(3.) If there is no available court, the registrar shall send notice of the intended application to the judge, who shall as soon as conveniently may be fix a time and place for the hearing of the application. Such time shall not, except by consent, be less than seven days from the date of the application to the registrar.

Summons to other party.
Form 35.

(4.) On the time and place for the hearing of the application being fixed, the registrar shall issue to the applicant a summons under the seal of the court according to the form in the Appendix, addressed to the other party to the arbitration, and requiring him to attend on the hearing of the application.

Service of summons.

(5.) Such summons shall be served by the applicant on the other party in accordance with Rule 15 of these Rules not less than four clear days before the day fixed for the hearing, unless such party agrees to accept shorter service.

Hearing of application.

(6.) On the day fixed for the hearing the judge shall dispose of the application on hearing the parties, or on hearing the applicant and on proof of service of the summons on the other party, if such other party does not appear.

Ascertainment of willingness to act.

(7.) Before appointing any person to act as arbitrator, the judge shall ascertain that such person is willing to serve if appointed.

Order.

(8.) The appointment may be made by indorsement on the summons, or by a separate order.

Costs.

(9.) The costs of the application shall be in the discretion of the judge, who may order the same to be paid by one party to the other, or to be dealt with as costs attending the arbitration. Such costs, if allowed, shall be taxed on such scale as the judge shall direct.

Digitized by Google

Memorandum under Schedule II., Paragraph 9.

41. (1.) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 9 of the second schedule to the Act required to be sent to the registrar, shall be intituled in the matter of the Act, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided. Memorandum to be sent to registrar. Act, Sched. 2, par. 9. Form 36.

(2.) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 15 of the second schedule to the Act, a copy of the report of the referee shall be annexed to the memorandum and recorded therewith; and if the referee attended any proceeding in the arbitration, it shall be so stated in the memorandum.

42. (1.) If the matter is decided by a committee or an arbitrator, the memorandum shall be authenticated by the signatures of the chairman and secretary of the committee, or by the signature of the arbitrator; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some party interested, to be by him so left or sent. Authentication of memorandum of decision of committee or arbitrator.

(2.) If the matter is decided by agreement, the memorandum shall be authenticated by the signatures of all parties to such agreement, or by the signatures or signature of some or one of them, or by the signatures or signature of the solicitors to the parties or some or one of them on their or his behalf. Authentication of memorandum of agreement.

(3.) There shall be left or sent with the memorandum a copy thereof for every party interested, other than the party (if any) by whom the memorandum is left or sent. Copies.

43. On the receipt of the memorandum the registrar shall send one of the copies thereof to every party interested, with a notice according to the form in the Appendix, requesting such party to inform him within seven days from the date of the notice whether the memorandum is genuine, or whether he disputes it, and, if so, in what particulars, or objects to its being recorded, and, if so, on what grounds. Notice to parties interested of memorandum having been received. Form 37.

44. If all the parties interested admit the genuineness of the memorandum, or do not within such period of seven days dispute it or object to its being recorded, the registrar shall, subject to proviso (*d*) to paragraph 9 of the second schedule to the Act, and to Rule 49, record it without further proof. Recording of memorandum, if not disputed.

Digitized by Google

Where memorandum disputed, or employer objects to its being recorded. Act, Sched. 2, par. 9 (*b*).

Form 38.

45. If any party interested disputes the genuineness of the memorandum, or if, where a workman seeks to record a memorandum of agreement between his employer and himself, the employer alleges that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum, such party or employer shall within seven days from the date of the notice mentioned in Rule 43 file with the registrar a notice according to the form in the Appendix that he disputes the genuineness of the memorandum or that he objects to its being recorded, and shall with such notice file a copy thereof for each of the other parties interested.

Notice of dispute or objection.

Form 39.

46. On the receipt of any such notice as in the last preceding rule mentioned, the registrar shall send a copy thereof to each of the other parties interested, together with a notice according to the form in the Appendix, informing such party that the memorandum will not be recorded except with the consent in writing of the party or employer disputing the same or objecting to the same being recorded, or by order of the judge.

Subsequent proceedings.

47. (1.) If the consent mentioned in the last preceding rule is obtained, the registrar shall, subject to proviso (*d*) to paragraph 9 of the second schedule to the Act, and to Rule 49, record the memorandum without further proof.

(2). If such consent cannot be obtained, any party interested may apply to the judge to order the memorandum to be recorded.

Proceedings for Record of Memorandum or Rectification of Register.

Proceedings on application for record of memorandum or rectification of register.

Form 40.

48. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 9 of the second schedule to the Act.

(*a*) The application shall be made in court on notice in writing stating the relief or order which the applicant claims.

(*b*) The notice shall be filed with the registrar, and copies thereof shall be served—

(i) in the case of an application for an order that a memorandum be recorded, on the party disputing the memorandum or objecting to its being recorded, and on all other parties interested:

(ii) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these Rules as to the parties to an arbitration;

Digitized by Google

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(*c*) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(*d*) On the hearing of the application the judge may make such order or give such directions as he may think just, regard being had, in the case of an application for an order that a memorandum of an agreement be recorded, to proviso (*d*) to paragraph 9 of the second schedule to the Act.

(*e*) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such application.

Reference of Agreement presented for Registration to the Judge. Schedule II., Paragraph 9, Proviso (d)

Proceedings where agreement presented for registration is referred by registrar to judge. Act, Sched. 2, par. 9, proviso (*d*).

49. (1.) Where a memorandum of an agreement presented for registration relates to any matter referred to in proviso (*d*) to paragraph 9 of the second schedule to the Act, the registrar may, before recording the same, make such inquiries and obtain such information as he may think necessary in order to satisfy himself whether the memorandum may properly be recorded, regard being had to the said proviso.

(2.) Where it appears to the registrar that the memorandum ought not to be recorded for any reason mentioned in the said proviso, he shall make a report to the judge in writing, stating the information he has obtained, and the grounds on which it appears to him that the memorandum ought not to be recorded.

(3.) If on consideration of the registrar's report it appears to the judge that the memorandum may properly be recorded, he may so direct, and it shall be recorded accordingly.

(4.) If on consideration of the registrar's report it appears to the judge that the memorandum should not be recorded without further inquiry, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge. Form 41.

(5.) The notices shall be sent to the parties or their solicitors ten clear days at least before the day fixed for the inquiry, unless the judge directs shorter notice to be given.

(6.) At the inquiry witnesses may be orally examined in the same manner as on the hearing of an action.

Digitized by Google

(7.) At the inquiry the judge may make such order or give such directions as he may think just.

(8.) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such inquiry.

Proceedings for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (c).

Application for removal of agreement from register. Act, Sched. 2, par. 9, proviso (c). Form 42.

50. (1.) An application to the judge by or on behalf of any party for the removal from the register of the record of a memorandum of an agreement under proviso (c) to paragraph 9 of the second schedule to the Act shall be made in court on notice in writing: and the provisions of Rule 48 shall apply to the proceedings on such application.

Notice where inquiry directed by judge.

Form 43.

(2.) If it appears to the judge on a report by the registrar without such application as in the last preceding paragraph mentioned that the record of a memorandum of an agreement should be removed from the register pursuant to the said proviso, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

(3.) Such notice shall be sent and the inquiry held in accordance with the provisions of the last preceding rule, and the provisions of that rule shall apply to any such inquiry.

Certificate under Section 1, Sub-section 4.

Certificate under Act, sect. 1, sub-sect. 4.

Form 44.

51. (1.) Where an action is brought in the County Court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of section 1 of the Act, the certificate given by the court shall be according to the form in the Appendix.

(2.) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were an award made by the judge.

Summoning Medical Referee as Assessor under Schedule II., Paragraph 5.

Application for assessor. Act, Sched. 2, par. 5.

Form 45.

52. (1.) Any party to an arbitration may eight clear days at least before the day fixed for proceeding with the arbitration file with the registrar on application according to the form in the Appendix, requesting the judge to summon a medical referee to sit with him as an assessor under paragraph 5 of the second schedule to the Act.

Digitized by Google

(2.) On the receipt of an application for an assessor the registrar shall forward a copy of the same to the judge, who if he thinks fit shall return the same with his approval, and thereupon the registrar shall forthwith summon an assessor. Assessor to be summoned if judge approves.

(3.) If the judge does not think fit that an assessor shall be summoned, notice thereof shall be given by the registrar to the applicant, according to the form in the Appendix. Notice where judge does not approve. Form 46.

(4.) If the judge thinks fit, either on the application of any party to an arbitration or on his own motion, to summon a medical referee to sit with him as an assessor, the registrar shall forthwith summon one of the medical referees appointed by the Secretary of State for the area comprising the district of the court in which the arbitration is pending, by sending to such medical referee by post a summons according to the form in the Appendix. Summoning of assessor if judge approves or so directs. Form 47.

(5.) If at the time and place appointed for the arbitration the medical referee summoned does not attend, the judge may either proceed with the arbitration without the assistance of an assessor, or he may adjourn the hearing. Where assessor fails to attend.

Appointment of Medical Referee to Report under Schedule II., Paragraph 15.

53. (1.) Subject to and in accordance with regulations made by the Secretary of State and the Treasury under paragraph 15 of the second schedule to the Act, the judge may submit to a medical referee for report any matter which seems material to any question arising in an arbitration. Appointment of medical referees to report under Act, Sched. 2. par. 15.

(2.) When any matter is submitted as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly.

Application for Reference to Medical Referee under Schedule I., Paragraph 15.

54. (1.) With respect to applications to the registrar pursuant to paragraph 15 of the first schedule to the Act to refer any matter to a medical referee, the following provisions shall have effect. Application for reference to a medical referee under Act, Sched. 1, par. 15.

(2.) An application to the registrar to refer any matter to a medical referee shall be made in writing, and shall contain a statement of the facts which render the application necessary, according to the form in the Appendix, and shall be accompanied by a copy of the report of every medical practitioner who has examined the workman either on behalf of the employer or on the selection of the workman. The Form 48.

Digitized by Google

application shall be signed by or on behalf of both parties; and the applicant shall file copies of the application and reports for the use of the medical referee.

(8.) On the hearing of the application the registrar shall refer the matter to one of the medical referees appointed for the area comprising the district of the court: and shall forward to such medical referee by registered post one of the filed copies of the application and reports, with an order of reference according to the form in the Appendix.

Form 49.

Form 50.

(4.) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State.

(5.) Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel shall so state in the order of reference: and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

(6.) The registrar shall deliver or send by registered post to each party a copy of the order of reference, and shall send to the workman a copy of the order directing him to submit himself for examination.

(7.) The medical referee shall forward his certificate in the matter to the registrar by registered post.

Form 51.

(8.) On the receipt of the certificate of the medical referee the registrar shall inform the parties by post that it has been received, and shall permit any party to inspect the same during office hours, and shall on the application and at the cost of either party furnish him with a copy of the certificate, or allow him to take a copy thereof.

(9.) The fee payable by the applicant shall be calculated at the rate of one shilling in the pound on 26 times the amount of the weekly payments claimed by or payable to the workman, so that the total fee shall not exceed one pound.

(10.) The costs of any application to the registrar, including the fee paid under the last preceding paragraph, may be allowed as costs in any subsequent arbitration for the settlement of the weekly payment to be made to the workman, or, where the application is made after the weekly payment has been settled, as costs in any subsequent arbitration as to the review of such weekly payment.

Digitized by Google

Suspension of Proceedings or Weekly Payments on Refusal to Submit to Examination under Schedule I., Paragraph 4, Paragraph 14, or Paragraph 15.

55. (1.) In any case in which a workman has given notice of an accident, or is receiving weekly payments under the Act, and the employer alleges that the workman refuses to submit himself to medical examination in accordance with paragraph 4, paragraph 14, or paragraph 15 of the first schedule to the Act, or in any way obstructs such examination, the employer may apply for a suspension of the right to compensation and to take or prosecute any proceedings under the Act in relation to compensation, or of the right to the weekly payments, until such examination has taken place, in accordance with this rule.

Application to stay proceedings or suspend weekly payments on refusal of workman to submit to examination under Act, Sched. 1, par. 4, par. 14, or par. 15.

(2.) Where proceedings are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3.) Where the workman has given notice of an accident, but no proceedings are pending, or proceedings are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(4.) Where the workman is receiving weekly payments under an award, memorandum, or certificate, then—

(*a*) If proceedings for the review of the weekly payment are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator;

(*b*) If no proceedings for review are pending, or if proceedings for review are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(5.) Where the application is to be made to the judge, it may be made in or out of court in accordance with Rule 48; and the provisions of the said rule shall apply to the proceedings on such application, with the following modification;—

Form 52.

(*a*) The notice shall be served on the workman or his solicitor five clear days before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

Payment into Court and Investment and Application of Money payable in case of Death. Schedule I., Paragraph 5.

* 56. (1.) Where any payment in the case of death is to be paid into the county court pursuant to paragraph 5 of the first schedule to the Act, the following provisions shall have effect.

Payment into court, investment, and application of payment in case of death. Act, Sched. 1, par. 5.

(2.) Where any money is to be paid into court under an award made by the judge or an arbitrator appointed by him, payment shall be made in accordance with the directions contained in the award.

* The whole of Rule 56 is annulled by the Rules of March 14, 1908 (see post, Appendix J).

Digitized by Google

(3.) In any other case payment shall be made into the court in which the memorandum of the decision, award, or agreement under which the money is to be paid, or the certificate under which the money is to be paid, has been or is to be recorded.

Form 53.

(4.) Where money is to be paid into court under the last preceding paragraph, the party paying the same shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, annexing to one copy of the præcipe a form of receipt, and the registrar, on the receipt of the sum paid in, shall sign the receipt and return the same to the party making the payment; and the party making the payment shall forthwith give notice to the persons interested in the sum paid in of such payment having been made.

(5.) If all questions as to who are dependants and the amount payable to each dependant have been settled by agreement or arbitration before payment into court, the sum paid into court shall be allotted between the dependants in accordance with the agreement or award, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(6.) If such questions have not been settled before payment into court, then

(*a*) If all the persons interested in the sum paid into court agree to leave the application thereof to the court, the amount paid into court shall, on application by or on behalf of such persons, be invested, applied, or otherwise dealt with by the court for the benefit of the persons entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(*b*) If any question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, such question shall be settled by the court by arbitration in accordance with these rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(7.) Where any question is settled by the court by arbitration in accordance with the last preceding paragraph, an application for the investment or application of any sum allotted to any person on such arbitration may be made at or immediately after the hearing of the arbitration.

(8.) Where application is not so made, or in any other case coming within paragraph 5 of the first schedule to the Act, an application for

Digitized by Google

the investment or application of the sum paid into court, or the amount allotted to any person, may be made without petition, and the judge, on such evidence of title and identity as he may think necessary, may make such order under paragraph 5 of the first schedule of the Act and this rule as he may think fit.

(9.) Every order for the investment or application of money paid into court shall reserve liberty to the parties interested to apply to the court as they may be advised.

(10.) When any sum allotted to any person under paragraph 5 of the first schedule to the Act or this rule is ordered to be paid out to or applied for the benefit of the person entitled thereto, by weekly or other periodical payments, such payments may be made to the person entitled to receive the same either at the office of the registrar, or, on the written request of such person, by crossed cheque or Post Office order addressed to such person and forwarded by registered post letter, payment by post being in all cases at the cost and risk of the person requesting the same.

(See Rule 56A 1–18 of amended rules, post, Appendix J.)

Payment into Court and application of Weekly Payments payable to Persons under Legal Disability. Schedule I., Paragraph 7.

57. (1.) An application under paragraph 7 of the first schedule to the Act for an order that a weekly payment payable under the Act to a person under any legal disability shall during the disability be paid into court may be made either by the person liable to make such payment, or by or on behalf of the person entitled to such payment.

Application for payment into court of weekly payment to person under legal disability. Act, Sched. 1, par. 7.

(2.) If the weekly payment is awarded by the judge, the application may be made at or immediately after the hearing of the arbitration.

(3.) In any other case the application may be made in or out of court on notice in writing, which shall be served on the other party or his solicitor five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice; and the provisions of Rule 48 shall apply to any such application.

Form 54.

(4.) Where any weekly payment is ordered to be paid into court, the sums paid in shall be paid out by the Registrar to or otherwise applied for the benefit of the person entitled thereto in such manner as the judge shall direct; and the provisions of the last preceding rule as to the payment out or application of sums by weekly or other periodical payments shall apply.

Digitized by Google

Application for Variation of Order under Schedule I., Paragraph 9.

Application for variation of order. Act, Sched. 1, par. 9. Form 55.

58. (1.) An application for the variation of an order of the court under paragraph 9 of the first schedule to the Act may be made by any person interested.

(2.) The application shall be made in court on notice in writing, stating the circumstances under which the application is made, and the relief or order which the applicant claims.

(3.) The notice shall be filed with the registrar, and notice thereof shall be served on all persons interested in accordance with Rule 48; and the provisions of that rule and of Rule 56 shall apply to the proceedings on such application.

Investment and Application of Lump Sum paid in Redemption of Weekly Payment. Schedule I., Paragraph 17.

Investment and application of sums paid in redemption of weekly payments. Act, Sched. 1, par. 17.

59. Where pursuant to paragraph 17 of the first schedule to the Act a lump sum payable for the redemption of any weekly payment is ordered by a committee or an arbitrator, or by the judge, to be invested or applied for the benefit of the person entitled thereto, such sum shall be paid into court; and the provisions of paragraph 5 of the first schedule to the Act and of Rule 56 shall apply to the investment and application of such lump sum.

Proceedings where Workman receiving Weekly Payment intends to cease to reside in United Kingdom. Schedule I., Paragraph 18.

Where workman receiving weekly payment intends to cease to reside in United Kingdom. Act, Sched. 1, par. 18.

Form 56.

60. (1.) Where a workman receiving a weekly payment intends to cease to reside in the United Kingdom, the following provisions shall have effect under paragraph 18 of the first schedule to the Act.

(2.) The workman may apply to the registrar to refer to a medical referee the question whether the incapacity of the workman resulting from the injury is likely to be of a permanent nature.

* (3.) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar, and shall be accompanied by a copy of the report of any medical practitioner who has examined the workman on the selection of the workman; and a copy of the application and of such report (if any) shall be served on the employer or his solicitor in accordance with Rule 48; and the applicant shall file a copy of the application and of the report (if any) for the use of the medical referee.

* See amended rules, Appendix J, post, by which paras. 3–7 of this rule are annulled.

Digitized by Google

(4.) If the workman has been examined by a medical practitioner on behalf of the employer, the employer may at or at any time before the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

(5.) On the hearing of the application the registrar, on being satisfied that the applicant has a *bonâ fide* intention of ceasing to reside in the United Kingdom, shall make an order referring the question to a medical referee; and if he is not so satisfied, he may refuse to make an order, but in that case he shall, if so requested by the applicant, refer the matter to the judge, who may make such order or give such directions as he may think fit. Form 57.

(6.) If the registrar or the judge makes an order referring the question to a medical referee, he shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 3 to 6 of Rule 54 shall with the necessary modifications apply. Form 50.

(7.) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying therein the nature of the incapacity of the workman, and whether the same is total or partial; and the registrar shall thereupon proceed in accordance with paragraph 8 of Rule 54. Form 51.

(8.) Where the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature, the registrar shall on application furnish the workman

(*a*) with a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(*b*) with a copy of the award, memorandum, or certificate under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(*c*) with a certificate of identity according to the form in the Appendix; and Form 58.

(*d*) with a notice according to the form in the Appendix, annexing thereto forms of certificate and declaration according to the forms in the Appendix; Forms 59, 60, 61.

and shall procure from the workman a specimen of his signature, and file the same for reference.

Digitized by Google

(9.) A workman who desires to have the weekly payments payable to him remitted to him while residing out of the United Kingdom shall at intervals of three months from the date to which such payments were last made submit himself to examination by a medical practitioner in the place where he is residing, and shall produce to him the copy of the certificate of the medical referee and the certificate of identity furnished under the last preceding paragraph, and shall
Form 60. obtain from him a certificate in the form in the Appendix that the incapacity of the workman resulting from the injury continues; and such certificate shall be verified by declaration by the medical practitioner, in the presence of the workman, before a person having authority to administer an oath.

(10.) The workman shall also make a declaration of identity according
Form 61. to the form in the Appendix before a person having authority to administer an oath, producing to such person the copy and certificate above mentioned, and the certificate of the medical practitioner by whom he has been examined.

(11.) The workman shall forward the certificate and declaration in the two last preceding paragraphs mentioned to the registrar, with
Form 62. a request, according to the form in the Appendix, for the transmission to him of the amount of the weekly payments due to him, specifying the place where and the manner in which the amount is to be remitted, which request shall be signed by the workman in his own handwriting.

(12.) On receipt of the certificate, declaration, and request the registrar shall examine the same, and may if not satisfied that the same are in order return the same for correction.

(13.) If the registrar is satisfied that the certificate, declaration, and request are in order, or when they are returned to him in order,
Form 63. he shall send to the employer a notice according to the form in the Appendix, requesting him to forward the amount due; and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the workman at the address and in the manner requested by him, such remittance being in all cases at the cost and risk of the workman.

Costs.

Costs. Act, Sched. 2, par. 7.

61. (1.) Any costs of and incident to an arbitration and proceedings connected therewith directed by a committee or by an arbitrator (whether agreed on by the parties or appointed by the judge), or by the judge, to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to

Digitized by Google

actions in the County Court as the committee, arbitrator, or judge shall direct; and in default of such direction shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court: and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such action, and as to objections and review of taxation by the registrar, shall apply accordingly. Proceedings in an arbitration shall be within Order LIII., Rules 7 and 8, and the word "judge" in those rules shall include a committee and an arbitrator. Order LIII., Rules 7, 8.

(2.) Where the subject-matter of an arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject-matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

(3.) The committee, arbitrator, or judge, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

(4.) Where any workman is examined by a medical referee on a reference under paragraph 15 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

(5.) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 15 of the second schedule to the Act, any reasonable expenses incurred by such workman in travelling to attend on such referee for examination may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

62. Where any costs are awarded by a committee or an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the committee or arbitrator is recorded pursuant to paragraph 9 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly. Taxation of costs awarded by committee or arbitrator agreed on by parties.

Review of Taxation by Judge.

63. (1.) An application to the judge to review any taxation of costs shall be made on notice in writing, which shall be served on the opposite party two clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice. Review of taxation.

Digitized by Google

(2.) Such application shall be heard and determined upon the evidence which has been brought in before the registrar, and no further evidence shall be received on the hearing thereof unless the judge otherwise direct.

(3.) The costs of and incident to the application shall be in the discretion of the judge.

(4.) The result of such review shall be entered in the register.

As to authority of solicitor to receive costs payable by adverse party.

64. Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action.

Costs of Solicitor or Agent under Schedule II., Paragraph 14.

Application to determine costs payable to solicitor or agent. Act, Sched. 2, par. 14.

65. (1.) The following provisions shall apply to an application under paragraph 14 of the second schedule to the Act for the determination of the amount of costs to be paid to the solicitor or agent of a person claiming compensation under the Act.

(2.) Where the sum awarded as compensation has been awarded by a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3.) Where the sum awarded as compensation has been awarded by the judge or by an arbitrator appointed by him, the application may be made—

(*a*) to the judge or arbitrator at or immediately after the hearing of the arbitration: or

(*b*) at a subsequent date, but in that case it shall be made only to the judge.

(4.) Where a sum has been agreed on as compensation, the application shall be made to the judge.

Form 64.

(5.) An application made to the judge, other than an application under paragraph 3 (*a*) of this rule, shall be made in court on notice in writing in accordance with Rule 48.

(6.) Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said rule, and the provisions of the said rule shall apply to the proceedings on such application.

Digitized by Google

(7.) On the hearing of any application under this rule, the committee, arbitrator, or judge may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.

(8.) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the committee, arbitrator, or judge shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceedings had been an action in the County Court; and the statutory provisions and rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections and review of taxation by the registrar, shall apply accordingly; and any taxation shall be subject to review by the judge according to Rule 68.

(9.) Where the subject-matter of the arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject-matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

Provisions as to order declaring lien, &c.

66. Where an order is made by a committee, arbitrator, or judge awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded or agreed as compensation, or to be entitled to deduct such costs from any such sum, the following provisions shall apply:—

(*a*) The registrar shall, on application made to him, tax such costs.

(*b*) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded or agreed as compensation; and service thereof may be effected on such party in accordance with Rule 15.

Digitized by Google

(*c*) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last mentioned memorandum or award shall have effect subject to such order and memorandum.

(*d*) The party liable to pay such compensation shall on demand pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.

(*e*) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with Rule 48, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum; and in default of payment the judge may order execution to issue to levy such amount.

(*f*) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.

(*g*) Where the sum awarded as compensation has been paid into court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum.

Execution.

Execution. Form 65.

67. (1.) When a party liable to pay compensation or costs under any award, memorandum, or certificate has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, execution may issue against his goods without leave for the amount in payment of which he has made default.

(2.) Where such sum is not payable into court, the party applying for execution shall satisfy the registrar, by affidavit or otherwise, as to the amount in payment of which default has been made.

Order XXV., Rule 11.

(3.) Where the parties liable to pay compensation or costs under any award, memorandum, or certificate are a firm, the provisions of Order XXV., Rule 11, shall, with the necessary modifications, apply to execution under this rule.

Digitized by Google

Proceedings under Debtors Act, 1869, Section 5.

Proceedings under Debtors Act, 1869. 32 & 33 Vict. c. 62. s. 5.

68. (1.) Where proceedings by way of judgment summons under section 5 of the Debtors Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings; provided that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph 16 of the first schedule to the Act.

(2.) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment summons shall satisfy the court, by affidavit or otherwise, as to the amount in payment of which default has been made.

Form 66.

(3.) A judgment summons issued under this rule shall be according to the form in the Appendix.

(4.) Where the parties liable to pay compensation or costs are a firm, the provisions of the County Court Rules as to judgment summonses on a judgment or order against a firm shall, with the necessary modifications, apply to proceedings by way of judgment summons under this rule.

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

Other proceedings for enforcement of award, &c.

69. The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the County Court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate.

Setting aside Award or Order improperly obtained.

Rules as to new trials not to apply.

70. (1.) Notwithstanding anything in these Rules contained, the statutory provisions and rules relating to new trials in actions in the County Court shall not apply to arbitrations under the Act.

When award or order may be set aside or varied.

(2.) Where the judge is satisfied—

(a) that any award, or any order as to the application of any amount awarded or agreed upon as compensation, made by the judge or by an arbitrator appointed by him, has been obtained by fraud or other improper means; or

Digitized by Google

(*b*) that any person has been included in any award or order as a dependant who is not in fact a dependant as defined by the Act; or

(*c*) that any person who is in fact a dependant as defined by the Act has been omitted from any award or order,

the judge may set aside or vary the award or order, and may make such order (including an order as to any sum already paid under the award or order) as under the circumstances he may think just.

(3.) An application to set aside or vary an award or order under this rule shall be made in court on notice in writing, and the provisions of Rule 48 shall apply to the proceedings on such application.

(4.) An application to set aside or vary an award or order under this rule shall not be made after the expiration of six months from the date of the award or order, except by leave of the judge; and such leave shall not be granted unless the judge is satisfied that the failure to make the application within such period was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

Appeals.

Appeals. Act, Sched. 2, par. 4.

71. Appeals under paragraph 4 of the second schedule to the Act shall be had in accordance with the provisions of the Rules of the Supreme Court relating thereto.

Deposit of order of Court of Appeal with registrar, and procedure thereon.

72. (1.) When the Court of Appeal has given judgment on any appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the registrar: and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge: and such order shall have the same effect as if it had been a decision of the judge.

(2.) If such order has the effect of an award, decision, or order in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award, decision, or order of the judge.

(3.) If such order be to the effect that an award be made or a decision given or order made in favour of any party, the judge shall make such award or give such decision or make such order accordingly.

(4.) If such order directs or involves a re-hearing or further hearing of an arbitration or special case or other matter, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

Digitized by Google

(5.) Generally the judge shall make such award or give such decision or make such order and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal.

In what Court Proceedings may be taken.

In what court proceedings may be taken. Act, Sched. 2, par. 11.

78. (1.) Any matter which under the Act or these rules is to be done in a County Court, or by to or before the judge or registrar of a County Court, shall be done in the County Court, or by to or before the judge or registrar of the County Court,

(i) of the district in which all the parties concerned reside; or

(ii) if the parties concerned reside in different districts,

(*a*) of the district in which the accident out of which the matter arose occurred; or

(*b*) in the case of any such workman as in paragraph 1 of Rule 89 mentioned, of the district in which the workman was last employed in the employment to the nature of which the disease was due; or

(*c*) if the accident out of which the matter arose occurred at sea,

(1) of the district in which the ship shall be when the matter is to be done; or

(2) of the district comprising the port of registry of the ship; or

(3) of the district in which the workman or the dependants of the workman by whom or on whose behalf the matter is to be done, or some or one of them, resides or reside;

without prejudice to any transfer in manner provided by these Rules.

Detention of ships. 5 Edw. 7. c. 10. Act, sect. 11.

(2.) An application for an order for the detention of a ship may, subject to the provisions of the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905, be made to the judge of any court.

Proceedings against persons giving security. 5 Edw. 7. c. 10. Act, sect. 11.

(3.) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security pursuant to the Shipowners' Negligence (Remedies) Act, 1905, or section 11 of the Act and Rules 87 and 88, such proceedings may be commenced

(i) in the county court of the district in which all the parties concerned reside; or

(ii) if the parties concerned reside in different districts,

Digitized by Google

(*a*) in the county court of the district in which the accident occurred; or

(*b*) if the accident occurred at sea,

(1) in the county court of the district in which the vessel is or was detained, or in which the order for detention was made or applied for; or

(2) in the county court of the district in which the workman or the dependants of the workman, or some or one of them, resides or reside;

without prejudice to any transfer in manner provided by these Rules.

Proceedings in one Court as to Subject-matter of Award, Memorandum, or Certificate recorded in another Court.

Filing of certified copy of memorandum, &c. recorded in one court under Act, sched. 2, par. 9, before taking subsequent proceedings in another court.

74. Where an award, or a memorandum under paragraph 9 of the second schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other court, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in the court.

Transfer of Proceedings.

Transfer.

75. If the judge is satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court in England, Scotland, or Ireland, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned court any money invested in his name as registrar: and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII., Rule 9, shall apply to any such transfer or application for a transfer.

Order VIII., Rule 9.

Transfer of Money paid into Court.

Transfer of money paid into court. Act, Sched. 1, par. 6.

76. (1.) The provisions of the last preceding rule shall apply to the transfer of money paid into court from one court to another pursuant to paragraph 6 of the first schedule to the Act or otherwise, and to proceedings with respect to the application of such money.

Digitized by Google

(2.) Where any money ordered to be transferred from one court to another is invested in the Post Office Savings Bank in the name of the registrar, such money shall be transferred into the name of the registrar of the court to which the money is ordered to be transferred in accordance with regulations to be made by the Postmaster-General with the consent of the Treasury: and where any money ordered to be transferred is not so invested it shall forthwith be so invested, and shall when invested be transferred in accordance with this rule.

Filing and Service of Documents and Notices.

77. (1.) Where any document is to be filed with the registrar under these Rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2.) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3.) Where any document is under these Rules to be sent to any person by the registrar, that document may be sent by post.

(4.) Any proceeding, document, or notice which is under these Rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these Rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury; and the provisions of Order LIV., Rule 2, shall apply to the service of any such proceeding, document, or notice.

Act, sect. 2 sub-sects. 3, 4.

Order LIV., Rule 2.

Procedure Generally.

78. The provisions of Order XXIII., Rule 6, Order LIV., Rules 1 and 3 to 6, and Order VII., Rule 40, as to parties acting by solicitors, and as to substituted service and notice in lieu of service shall apply to proceedings under the Act.

Provisions as to parties acting by solicitors, and as to substituted service and notice in lieu of service. Order XXIII., Rule 4; Order LIV., Rules 1, 3 to 6; Order VII., Rule 40.

Digitized by Google

Proceedings where Crown a party.

79. (1.) In any proceedings under the Act or these Rules arising out of an injury to a workman employed by or under the Crown, in which, if the employer were a private person, such employer would be a necessary party, the head of the department by in or under which the workman was employed, or, where the department is administered by a Board or by Commissioners, such Board or Commissioners, shall be made a party under his or their official title as representing the Crown.

Service of documents, &c.

(2.) In any such case any proceeding, document, or notice to be served on the head of the department, or on the Board or Commissioners, may be served on the permanent secretary to the department, subject to the provisions of these rules as to service on parties acting by solicitors.

Procedure, where not otherwise provided for.

80. Where any matter or thing is not specially provided for under these Rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the rules made in pursuance of that Act.

Record of Proceedings.—Special Register.

Record of proceedings before judge or arbitrator. Special register. Form 67.

81. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the court in the manner in which other proceedings in the court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

(1.) A memorandum of every application made to the judge for the settlement of any matter by arbitration;

(2.) A memorandum of every appointment of an arbitrator to settle any such matter made by the judge;

(3.) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator appointed by him prior to the award;

(4.) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if a medical referee is summoned or requested to attend any proceeding in the arbitration, of such summons or request and attendance;

(5.) A memorandum of every award made by the judge, or by an arbitrator appointed by him;

(6.) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon;

(7.) A memorandum of every judgment given by the Court of Appeal on any appeal;

Digitized by Google

(8.) A memorandum of every application to the court for the examination of an employer pursuant to Rule 85, paragraph 2, and of the order and proceedings thereon;

(9.) A memorandum of every application to the court for the detention of a ship pursuant to section 11 of the Act and Rules 87 and 88, and of the order and subsequent proceedings thereon;

(10.) A memorandum of every application to the judge for the appointment of an arbitrator in case of the death or refusal or inability to act of an arbitrator agreed on by the parties, and of the proceedings and order thereon;

(11.) A copy of every memorandum sent to the registrar pursuant to paragraph 9 of the second schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge;

(12.) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof;

(13.) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon;

(14.) If in the case of a memorandum of an agreement the registrar refers the matter to the judge, a memorandum of such reference, and of the directions of the judge, and the subsequent proceedings and order thereon;

(15.) A memorandum of the result of every taxation or review of taxation of costs under any such memorandum, or under any award or order;

(16.) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon;

(17.) A memorandum of every application or report with reference to the removal of the record of a memorandum of an agreement from the register, and of the subsequent proceedings and order thereon;

(18.) A memorandum of every application to the judge or arbitrator, under paragraph 14 of the second schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation or review of taxation under such order;

(19.) A copy of every certificate under subsection 4 of section 1 of the Act given by the court or sent to the registrar from any other court;

Digitized by Google

(20.) A memorandum of every proceeding taken in the court for the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding;

(21.) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 15 of the first schedule of the Act, and of the order and subsequent proceedings thereon;

(22.) A memorandum of every application to the court for the suspension of the right to compensation or to take or prosecute any proceedings under the Act in relation to compensation, or of the right to weekly payments, and of the proceedings and order thereon;

(23.) A memorandum of every sum paid into court pursuant to paragraph 5 of the first schedule to the Act, or under any award memorandum, or certificate;

(24.) A memorandum of every application made to the court with reference to any such sum, and of every order made on such application, and of the manner in which such sum is invested, applied, or disposed of;

(25.) A memorandum of every application for the payment of any weekly payment into court, and of the proceedings and order thereon, and of the directions given as to the payment out or application of any such weekly payment;

(26.) A memorandum of every application for variation of an order of the court as to the apportionment, investment, or application of any sum paid as compensation, and of the proceedings and order thereon;

(27.) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 18 of the first schedule to the Act in the case of a workman intending to cease to reside in the United Kingdom, and of the order and the proceedings thereon; and of every certificate and declaration of identity and request for payment received from such workman, and of the proceedings thereon;

(28.) A memorandum of every application to set aside or vary an award or order under Rule 70, and of the proceedings and order thereon.

(29.) A memorandum of every certified copy given pursuant to Rule 74, or a copy of every certified copy filed pursuant to that rule;

(30.) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order;

Digitized by Google

(31.) A memorandum of the transmission of documents and certified copies pursuant to paragraph 11 of Rule 37 or paragraphs (iii) or (iv) of Rule 38;

(32.) A memorandum of the transfer of any money paid into court to any other court;

(33.) The like memorandum as to every matter transferred, or document or certified copy transmitted or money transferred to the court, as would have been recorded as to such matter, document, or money if it had been originally commenced and prosecuted in or transmitted to or paid into the court;

(34.) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the court under the Act.

References to Medical Referees.

References to medical referees.

82. (1.) Where a medical referee is summoned as an assessor, or any matter is referred to a medical referee, such referee shall be summoned, or the matter shall be referred subject to and in accordance with any regulations made by the Secretary of State and the Treasury; and any such regulations shall so far as they affect the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator, be deemed to be Rules of Court, and shall have effect accordingly.

References under Act. s. 8 (1) (*f*).

(2.) In particular, if such regulations as in the preceding paragraph mentioned provide that an employer or a workman who desires any matter to be referred to a medical referee under paragraph (*f*) of subsection 1 of section 8 of the Act shall apply to the registrar of a county court for the matter to be so referred, it shall be the duty of the registrar to refer the same in accordance with such regulations.

Record and returns as to references.

(3.) The registrar shall keep a record in the form prescribed by regulations made by the Secretary of State of all cases in which medical referees are summoned as assessors or matters are referred to medical referees, and shall forward a copy of the same to the Secretary of State at such times as may be prescribed by such regulations.

Matters, how distinguished.

Matters, how distinguished

83. Every matter brought into the court under the Act shall be intituled in the matter of the Act, and shall be distinguished by a separate number; and all documents filed and subsequent proceedings taken in the court with reference to such matter shall be

Digitized by Google

intituled in like manner, and shall be distinguished by the same number; and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter.

Forms.

Forms in Appendix or like forms may be used.

84. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act.

Digitized by Google

APPENDIX B

FORM 1.

Application for Arbitration by Injured Workman with respect to the Compensation payable to him.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an arbitration between

A.B.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*) Respondent.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. a workman employed by C.D. & Co., Limited, [*or* by , a contractor with C.D. & Co., Limited, for the execution of work undertaken by them].

2. A question has [*or* Questions have] arisen

[*here state the questions, specifying only those which have arisen; e.g.*]—

(*a*) as to whether the said A.B. is a workman to whom the above-mentioned Act applies: *or*

(*b*) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the said injury: *or*

(*c*) as to the amount [*or* duration] of the compensation payable by the said C.D. & Co., Limited, to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the said C.D. & Co., Limited, for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

Digitized by Google

PARTICULARS.

1. Name and address of applicant.

2. Name, place of business, and nature of business of respondent.

3. Nature of employment of applicant at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the employer by whom he was immediately employed, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

9. Payment, allowance or benefit received from employer during the period of incapacity.

10. Amount claimed as compensation.

Digitized by Google

PARTICULARS—*continued.*

11. Date of service of statutory notice or accident on respondent, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]	
12. If notice not served, reason for omission to serve same.	

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The name and address of the respondent to be served with this application are:

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 2.

Application for Arbitration by or on behalf of Dependants of Deceased Workman, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an injury to the Workman, and the Settlement of Questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter.

Digitized by Google

In the matter of an arbitration between

E.F.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and
G.H.
of (*address*)
(*description*) Respondents.

[*or as the case may be; see Rule* 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [*or* by a contractor with C.D. & Co., Limited, for the execution of work undertaken by them,] and on the day of the death of the said A.B. resulted from the injury.

2. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen; e.g.*]—

(*a*) as to whether the said A.B. was a workman to whom the above-mentioned act applied; *or*

(*b*) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*

(*c*) as to the amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*

(*d*) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*

(*e*) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[*or as the case may be.*]

Digitized by Google

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of the dependants of the said A.B. [*or* between E.F., a dependant of the said A.B.] and the said C.D. & Co. Limited, and G.H. , who claims or may be entitled to claim to be a dependant of the said A.B.
[*or as the case may be; see Rule* 4.]
for the settlement of the said question [*or* questions.]

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

5. Nature of injury to deceased, and date of death.

6. Earnings of deceased during the 3 years next preceding the injury, if he had been so long in the employment of the employer by whom he was immediately employed, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of his actual employment under the said employer.

Digitized by Google

PARTICULARS—*continued.*

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

13. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

Digitized by Google

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.H.,

Dated this day of

(Signed) Applicant.

[*Or*

Applicant's Solicitor.]

FORM 8.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the total amount Payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.
of (*address*)
(*description*) Applicant

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and
G.H.,
of (*address*)
(*description*)
J.K.,
of (*address*)
(*description*)
and
L.M.,
of (*address*)
(*description*) Respondents.

[*or as the case may be; see Rule* 5.]

Digitized by Google

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [*or* by , a contractor with C.D. & Co., Limited, for the execution of work undertaken by them,] and on the day of the death of the said A.B. resulted from the injury.

2. The amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. has been agreed [*or* ascertained], but a question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen; e.g.*]—

(*a*) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*

(*b*) as to the apportionment and application of the compensation payable to the dependants of the said A.B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of N.O. P.R. &c., dependants of the said A.B. [*or* between E.F. N.O. P.R. &c., dependants of the said A.B.], and the said C.D. & Co., Limited, and G.H. J.K. and L.M. , who are or claim or may be entitled to claim to be dependants of the said A.B.

[*or as the case may be; see Rule* 5.]

for the settlement of the said question [*or* questions.]

4. Particulars are hereto appended [*or* annexed.]

PARTICULARS.

1. Name and late address of deceased workman.
2. Name and place of business of employer by whom compensation has been paid or is payable.
3. Date of accident to deceased, and date of death.

Digitized by Google

PARTICULARS—*continued.*

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased.

5. Particulars as to whether the compensation money is still payable by the employer or has been paid by him, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—*If there is a legal personal representative, and he is not the applicant, he must be made a respondent.*]

9. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

Digitized by Google

PARTICULARS—*continued.*

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.	

The names and addresses of the applicant and his solicitor are

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited

G.H.

I.K.

L.M.

[*or as the case may be.*]

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 4.

Application for Arbitration with respect to the Compensation payable in respect of expense of Medical Attendance and Burial, where Deceased Workman leaves no Dependants.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No of Matter

In the matter of an Arbitration between

E.F.,
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and
G.H.,
of (*address*)
(*description*) Respondents.

Digitized by Google

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [*or* by , a contractor with C.D. & Co., Limited, , for the execution of work undertaken by them,] and on the day of the death of the said A.B. resulted from the injury.

2. The said A.B. left no dependants within the meaning of the above-mentioned Act.

3. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen; e.g.*]—

(*a*) as to whether the said A.B. was a workman to whom the above-mentioned Act applied; *or*

(*b*) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B. ; *or*

(*c*) as to the amount of compensation payable by the said C.D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B. ; *or*

(*d*) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between E.F. and the said C.D. & Co., Limited, and G.H. for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.	
2. Name, place of business, and nature of business of respondent from whom compensation is claimed.	

Digitized by Google

PARTICULARS—*continued.*

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

5. Nature of injury to deceased, and date of death.

6. Name and address of applicant for arbitration.

7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.

8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.

9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.

Digitized by Google

10. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

11. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:—

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.H.

Dated this day of .

(Signed) Applicant.

[*Or*

Applicant's Solicitor.]

FORM 5.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase, or Redemption of a Weekly Payment.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

C.D. & Co., Limited,
of (*address*)
(*description*) Applicants,

and

A.B.,
of (*address*)
(*description*)
[*or as the case may be; see* Act, Sche . 1, pars. 16, 17.]

Digitized by Google

An arbitration under the Workmen's Compensation Act, 1906, is hereby requested between C.D. & Co., Limited. and A.B.

[*or as the case may be ; see* Act, Sched. 1, pars. 16, 17.]

with respect to the review and termination [*or* diminution, increase, or redemption, *as the case may be*] of the weekly payment payable to the said A.B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.	
2. Name and place of business of employer by whom compensation is payable.	
3. Date and nature of accident.	
4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.	
5. Relief sought by applicant, whether termination, diminution, increase, or redemption.	
6. Grounds on which termination, diminution, or increase is claimed.	

The names and addresses of the applicants and their solicitors are :—

Of the Applicants,

Of their Solicitor,

The name and address of the respondent to be served with this application are :

Dated this day of .

(Signed) ,

Applicants.

[*Or*

Applicants' Solicitor].

Digitized by Google

FORM 6.

Application for Arbitration by an Injured Master, Seaman, Apprentice, or Pilot, with respect to the Compensation payable to him.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant,

and

The owner of the ship " "
Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , the master of the ship " " [*or* a seaman *or* an apprentice to the sea service *or* an apprentice in the sea-fishing service and a member of the crew of the ship " "] [*or* a pilot employed on the ship " "].

2. A question has [*or* Questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a*) as to whether the said A.B. is a workman within the meaning of the above-mentioned Act; *or*

(*b*) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(*c*) as to the amount [*or* duration] of the compensation payable by the owners of the said ship to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the owners of the said ship for the settlement of the said question [*or* questions].

4 Particulars are hereto appended [*or* annexed].

Digitized by Google

PARTICULARS.

1. Name and address of applicant.

2. Name of ship of which applicant was master [*or* of the crew of which applicant was a member *or* on which applicant was employed as pilot] at time of accident, and port of registry.

3. Nature of employment at time of accident.

4. Date and place of accident, nature of work on which applicant was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the same owners, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

9. Payment, allowance, or benefit received from employer during the period of incapacity.

10. Amount claimed as compensation.

Digitized by Google

PARTICULARS—*continued.*

11. Date of service of statutory notice of accident, and whether given before applicant voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]	
12. If notice not served, reason for omission to serve same.	

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The name and address of the person to be served with this application as representing the owners of the ship are:

[*State name and address of managing owner or manager, or of master of ship. See Rule 36* (6).]

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 7.

Application for Arbitration by or on behalf of Dependants of Deceased Master, Seaman, Apprentice, or Pilot.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.
of (*address*)
(*description*) Applicant,

and

The owners of the ship " "

and

G.B.
of (*address*)
(*description*) Respondents.

[*or as the case may be; see Rule 4.*]

Digitized by Google

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, the master of the ship " " [*or* a seaman] [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the ship " " [*or* a pilot employed on the ship " "], and on the day of the death of the said A.B. resulted from the injury.

[*or* 1. The ship " " which left the port of on or about the day of , was lost with all hands on or about the day of [*or* was last heard of on or about the day of , and is believed to have been lost with all hands.]

When the said ship left the said port A.B. , late of , was the master thereof [*or* a seaman] [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the said ship [*or* a pilot employed on the said ship.]

2. A question has [*or* Questions have] arisen

[*here state the questions, specifying only those which have arisen; e.g.*]—

(*a*) as to whether the said A.B. was a workman within the meaning of the above-mentioned Act; *or*

(*b*) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*

(*c*) as to the amount of compensation payable by the owners of the said ship to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*

(*d*) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*

(*e*) as to the apportionment and application of the compensation payable by the owners of the said ship to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. [*or* between E.F. , a dependant of the said A.B.] and the owners of the said ship, and G.B. ,

Digitized by Google

who claims or may be entitled to claim to be a dependant of the said A.B.

[*or as the case may be; see Rule 4*]

for the settlement of the said question [or questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of master, seaman, apprentice or pilot.

2. Name of ship of which deceased was master [*or* of the crew of which deceased was a member *or* on which the deceased was employed as a pilot] at time of accident or loss of ship, and port of registry.

3. Nature of employment at time of accident or loss of ship.

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury [*or* date and place when and where ship was lost or is deemed to have been lost].

5. Nature of injury to deceased and date of death [*or* date when ship was lost or is deemed to have been lost.]

6. Earnings of deceased during the 8 years next preceding the injury or date of loss, if he had been so long employed under the same owners, or if the period of his employment had been less than the said 8 years, particulars of his average weekly earnings during the period of actual employment under the said owners.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

Digitized by Google

PARTICULARS—*continued.*

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to the dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

18. Date of service of statutory notice of accident, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

Digitized by Google

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

As representing the owners of the ship

[*State name and address of managing owner or manager, or of master of ship. See Rule 36* (6).]

and G.B.,

Dated this day of

(Signed) Applicant.

[*Or*

Applicant's Solicitor.]

FORM 8.

Application for Arbitration where Security has been given on behalf of the Owners of a Ship under Section 11.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant,

and

(*names and addresses of persons giving security*) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , of , and the said A.B. claims that the owners of the ship " " are liable under the Workmen's Compensation Act, 1906, to pay compensation in respect of the said injury.

2. The respondents have given security to abide the event of any proceedings that may be instituted in respect of the said injury, and to pay such compensation and costs as may be awarded thereon.

Digitized by Google

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a*) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; *or*

(*b*) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(*c*) as to the amount [*or* duration] of the compensation payable to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

[*Here insert particulars of circumstances under which the application is made, and of the relief or order which the applicant claims, adapting the particulars in the preceding forms to the circumstances of the case.*]

The names and addresses, &c. [*as in Form* 1.]

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and the persons giving security.*

FORM 9.

Application for Arbitration by Workmen disabled by or suspended on account of having contracted Industrial Disease coming within Section 8.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

Digitized by Google

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*) Respondent.

1. On the day of Mr. , the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [*or* Mr. , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906,] certified that A.B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed.

[*Or* 1. On the day of A.B of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The said A.B. alleges that the above-mentioned disease is due to the nature of his employment in [*describe employment*], and that he was last employed in such employment within the twelve months previous to the date of disablement or suspension by C.D. & Co., Limited, of .

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(*a*) as to whether the said A.B. is a workman to whom the Workmen's Compensation Act, 1906, applies; *or*

(*b*) as to the liability of the said C.D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, in respect of the said disease [*or* suspension]; *or*

(*c*) as to whether the said disease was in fact contracted whilst the said A.B. was in the employment of the said C.D. and Co., Limited, ; *or*

(*d*) as to whether the said disease is due to the nature of the employment of the said A.B. under the said C.D. & Co., Limited, ; *or*

Digitized by Google

(*e*) as to the amount [*or* duration] of the compensation payable by the said C.D. & Co., Limited, to the said A.B. under the Workmen's Compensation Act, 1906, in respect of the said disease.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the said C.D. & Co., Limited, for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name, place of business, and nature of business of respondents.

3. Nature of employment of applicant under respondents to which the disease was due.

4. Nature of disease.

5. Date of disablement or suspension.

6. Name and addresses of all other employers by whom applicant was employed in the same employment during the 12 months previous to date of disablement or suspension.

7. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

8. Average weekly earnings during the 12 months previous to date of disablement or suspension, if the applicant has been so long employed under respondents, or if not, during any less period during which he has been so employed.

9. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business.

Digitized by Google

PARTICULARS—*continued.*

10. Payment, allowance, or benefit received from employer during period of incapacity.

11. Amount claimed as compensation.

12. Date of service of statutory notice of disablement or suspension on respondents. [*A copy of the notice to be annexed.*]

13. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form* 1].

FORM 10.

Application for Arbitration by or on behalf of Dependants of Deceased Workman whose death has been caused by Industrial Disease.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.
of (*address*)
(*description*) Applicant,

and

C.D. & Co., Limited,
of (*address*)
(*description*)
and

G.H.
of (*address*)
(*description*) Respondents.

[*or as the case may be; see Rule 4.*]

Digitized by Google

1. On the day of Mr. the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [*or* Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906], certified that A.B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed; and on the day of the said A.B. died, his death being caused by the said disease.

[*Or* 1. On the day of A.B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and on the day of the said A.B. died, his death being caused by the said disease.]

[*Or* 1. On the day A.B. late of died, his death being caused by , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The applicant alleges that the above-mentioned disease was due to the nature of the employment of the said A.B. in (*describe employment*), and that he was last employed in such employment within the twelve months previous to his disablement or suspension [*or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement*, within the twelve months previous to his death] by C.D. & Co., Limited, of .

3. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen, e.g.*]—

(*a*) as to whether the said A.B. was a workman to whom the Workmen's Compensation Act, 1906, applied; *or*

(*b*) as to the liability of the said C.D. & Co., Limited, to pay compensation under the Workman's Compensation Act, 1906, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*

(*c*) as to whether the said disease was in fact contracted whilst the said A.B. was in the employment of the said C.D. & Co., Limited, ; *or*

Digitized by Google

(*d*) as to whether the said disease was due to the nature of the employment of the said A.B. under the said C.D. & Co., Limited, ; *or*

(*e*) as to whether the death of the said A.B. was in fact caused by the said disease; *or*

(*f*) as to the amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*

(*g*) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*

(*h*) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of the dependants of the said A.B. [*or* between E.F. , a dependant of the said A.B. ,] and the said C.D. & Co., Limited, and G.H. , who claims or may be entitled to claim to be a dependant of the said A.B.

[*or as the case may be; see Rule 4.*]

for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased under respondents to which the disease was due.

4. Nature of disease.

5. Date of disablement, and date of death.

Digitized by Google

PARTICULARS—*continued.*

6. Earnings of deceased during the 8 years next preceding disablement, if he had been so long in the employment of the respondents, or if the period of his employment had been less than the said 8 years, particulars of his average weekly earnings during the period of his actual employment under the respondents.

7. Names and addresses of all other employers by whom deceased was employed in the same employment during the 12 months previous to the date of disablement.

8. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

9. Name and address of applicant for arbitration.

10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representatives of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

11. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

Digitized by Google

PARTICULARS—*continued.*

12. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

14. Date of service of statutory notice of disablement. [*A copy of the notice to be annexed.*]

15. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form* 2].

FORM 11.

Application for Arbitration where rights of Employer against Insurers are transferred to Workmen under Section 5.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

No. of matter

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant

and

(*name and address of Insurers*) Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , a workman employed by

Digitized by Google

of (*name and address of employer*), [*or* by of , a contractor with (*name and address of employer*) for the execution of work undertaken by him], and the said A.B. claims that the said (*employer*) thereupon became liable to pay compensation under the Workmen's Compensation Act, 1906, to the said A.B. in respect of such injury.

[*Or, where weekly payment has been settled,*

1. Under an agreement [*or* a decision *or* an award *or* a certificate] recorded in this court on the day of a weekly payment of is payable by of (*name and address of employer*) to the above-mentioned A.B. as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment as a workman employed by the said (*employer*) [*or* by , a contractor with the said *employer*) for the execution of work undertaken by him].]

2. The respondents are insurers of the said (*employer*) in respect of his [*or* their] liability to pay such compensation.

3. The said (*employer*) has become a bankrupt [*or* made a composition *or* arrangement with his creditors] [*or, if the employer is a company,* The said has commenced to be wound up]; and the rights of the said (*employer*) against the respondents as such insurers in respect of his [*or* their] liability to the said A.B. have by virtue of section 5 of the said Act been transferred to and vested in the said A.B.

4. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen, e.g.*]—

(*a*) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; *or*

(*b*) as to the liability of the said (*employer*) to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(*c*) as to the liability of the respondents as such insurers as aforesaid to the said A.B. ; *or*

(*d*) as to the amount [*or* duration] of the liability of the respondents as such insurers as aforesaid to the said A.B. :

[*or as the case may be.*]

Digitized by Google

5. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question [*or* questions].

6. Particulars are hereto appended [*or* annexed.]

PARTICULARS.

(*Here insert particulars containing a concise statement of the circumstances under which the application is made, and of all matters necessary to be stated in order to bring the questions to be settled properly before the judge or arbitrator, and of the relief or order which the applicant claims, adapting the particulars given in the preceding forms to the circumstances of the case.*)

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The name and address of the respondents to be served with this application are:

Dated this day of

(Signed) Applicant.

[*Or*

Applicant's Solicitor.]

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and insurers.*

FORM 12.

Notice to Applicant of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE, that the judge of this Court [*or* Mr. the arbitrator appointed by the judge of this Court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of .

To

Of Registrar.

Digitized by Google

FORM 18.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE, that the judge of this Court [*or* Mr. the arbitrator appointed by the judge of this Court] will proceed with the arbitration applied for in the request and particulars, a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of

To

Of

Registrar.

Digitized by Google

FORM 14.

Answer by Respondents.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondent, G.H., disclaims any interest in the subject matter of the above arbitration.

Or

That the respondents, C.D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, desire to bring to the notice of the judge [*or* arbitrator] the facts stated in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, intend at the hearing of the arbitration to give evidence and rely on the facts stated in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the Act in respect of the injury to A.B. mentioned in the applicant's particulars, on the grounds stated in the particulars hereto annexed.

PARTICULARS.

1. *Particulars in which the particulars filed by the Applicant are inaccurate or incomplete.*

Digitized by Google

2. *Facts which the Respondents desire to bring to the notice of the Judge* [*or Arbitrator.*]

That the applicant A.B. . refuses to submit himself to medical examination as required by [*or* obstructs the medical examination required by] the respondents, C.D. & Co., Limited,
in accordance with paragraph 4 of the first schedule to the Act [*or* refuses to submit himself for examination by a medical referee as ordered] [*or* obstructs the examination by a medical referee ordered] in accordance with paragraph 15 of the first schedule to the Act.

[*or as the case may be.*]

3. *Facts which the Respondents C.D. & Co., Limited, intend to give in evidence and rely on at the hearing of the Arbitration.*

That notice of the alleged accident [*or* of death, disablement *or* suspension] was not given to the respondents as required by the Act; *or*

That the claim for compensation was not made on the respondents within the time limited by the Act; *or*

That a scheme of compensation [benefit *or* insurance] for the workmen of the respondents, C.D. & Co., Limited, has been duly certified by the Registrar of Friendly Societies, and such certificate was in force at the date of the alleged accident, and the said C.D. & Co., Limited, contracted with the applicant A.B. [*or* with the deceased workman], by a contract which was in force at the date of the alleged accident, that the provisions of the said scheme should be substituted for the provisions of the Act, and the said C.D. & Co., Limited,
are consequently liable only in accordance with the said scheme.

[*or as the case may be.*]

Digitized by Google

4. *Grounds on which the Respondents deny their Liability to pay Compensation.*

(i.) That the applicant A.B. is [*or* the deceased workman was] not a workman to whom the Act applies; *or*

(ii.) That the injury to the applicants [*or* to the deceased workman] was not caused by accident arising out of and in the course of his employment; *or*

(iii.) That the injury to the applicant [*or* to the deceased workman] was attributable to the serious and wilful misconduct of the applicant [*or* of the deceased workman], and did not result in death or serious and permanent disablement; *or*

(iv.) That at the time of the alleged accident the applicant [*or* the deceased workman] was not immediately employed by the respondents, but was employed by of , a contractor with the respondents for the execution by or under such contractor of work undertaken by the respondents, and the accident occurred elsewhere than on, in, or about premises on which the respondents had undertaken to execute the work or which were otherwise under the control or management of the respondents; *or*

(v.) That the injury to the applicant [*or* to the deceased workman] was caused under circumstances creating a legal liability in a person other than the respondents, to wit, [*name and address of such person*] to pay damages in respect thereof, and the applicant [*or* the deceased workman] has taken proceedings against that person and has recovered damages from him; *or*

in case of industrial disease,

(vi.) That the applicant [*or* the deceased workman] at the time of entering the employment of the respondents wilfully and falsely represented himself in writing as not having previously suffered from the disease mentioned in the applicant's particulars; *or*

(vii.) That the disease mentioned in the applicant's particulars was not contracted whilst the applicant [*or* the deceased workman] was in the employment of the respondents; *or*

(viii.) That the disease mentioned in the applicant's particulars was not due to the nature of the employment in which the applicant [*or* the deceased workman] was employed by the respondents:

[*or as the case may be.*]

Digitized by Google

And further take notice, that the names and addresses of the said respondents and their solicitors are:

of the Respondents,

C.D. & Co., Limited,

of their Solicitors,

Dated this day of

(Signed)

Solicitors for the Respondents,

To the Registrar of the Court, and C.D. & Co., Limited.

To the Applicant, A.B., and

To the Respondents

(*if any, naming them*).

FORM 15.

Notice by Respondent admitting Liability, and submitting to an Award for Payment of a Weekly Sum, or paying Money into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A.B., of the weekly sum of , such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the applicant forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of the said sum of to the applicant on Saturday [*or other usual pay day*] in every week.

Digitized by Google

[*Or*, And the said C.D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of such liability.]

Dated this day of

(Signed)

Solicitors for the Respondents,

To the Registrar of the Court, and C.D. & Co., Limited.

To the Applicant A.B., and

To the Respondents

(*if any, naming them*).

FORM 16.

Notice of filing of Submission to an Award.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of

If you elect to accept such weekly sum in satisfaction of your claim, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, a written notice forthwith by post or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited.

If you send such notice, the judge of this Court will, on application made to him, make an award directing payment of such weekly sum to you, and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater weekly payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of

Registrar.

To the Applicant, A.B.

Digitized by Google

FORM 17.

Notice of Payment into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice that they admit their liability to pay compensation in the above-mentioned matter, and they have paid into Court the sum of £ in satisfaction of such liability.

If you are willing to accept the sum so paid into Court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, and to the other respondents [*or where this notice is sent to a respondent*, to the applicant and the other respondents], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or* of the applicant and each of the other respondents].

If you and all the other respondents [*or* If you and the applicant and all the other respondents] send such notice, and agree as to the apportionment and application of the said sum of £ , the judge of this Court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or* If you and the applicant and all the other respondents] send such notice, but do not agree as to the apportionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or* as between the applicant and yourself and such other respondents.]

In default of such notice being sent by you and all the other respondents [*or* by the applicant and yourself and all the other respondents], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send such notice will be liable to be ordered to pay the costs incurred by the respondents, C.D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum

Digitized by Google

of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of ,

Registrar.

To the Applicant, A.B.,
[*or* To the Respondent, G.H.]
(*or as the case may be*).

FORM 18.

Notice of acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant, A.B. accepts the weekly sum offered by the respondents, C.D., & Co., Limited, in satisfaction of his claim in the above-mentioned matter [*or*, that the applicant E.F. [*or*, the respondent, G.H.] is willing to accept the sum of £ paid into Court by the respondents, C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter.]

But the applicant [*or*, the said respondent, G.H.] will apply to the judge to include in his award an order directing the said respondents, C.D. & Co., Limited, to pay the costs properly incurred by the applicant [*or*, the said respondent G.H.] before the receipt of notice of the offer of the said weekly sum [*or* of notice of payment of the said sum of £ into Court].

Dated this day of .

(Signed)

Applicant.

[*Or*

To the Registrar of the Court, and Respondent.]
To the Respondents, C.D. & Co., Limited, and
To the Applicant, A.B., and
To the Respondents
(*naming them*).

Digitized by Google

FORM 19.

Application for Addition of Employer as Respondent under Section 8, *Sub-section* (1), *Paragraph* (c), *Proviso* (ii).

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, allege that the disease mentioned in the applicant's particulars filed in this matter was in fact contracted while the applicant [*or* the deceased workman] was in the employment of of , and not whilst in the employment of the said C.D. & Co., Limited.

And the said C.D. & Co., Limited, hereby apply for an order that the said be joined as respondents in the above arbitration, and if necessary for an adjournment of the hearing of the arbitration.

Dated this day of .

(Signed) C.D. & Co., Limited.

By

Secretary.

[*Or*

Solicitors for the Respondents,

C.D. & Co., Limited.]

To the Registrar of the Court.

FORM 20.

Order adding Respondents.

[*Heading as in Request for Arbitration.*]

It is this day ordered on the application of the respondents, C.D. & Co., Limited, that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon.]

Dated this day of .

Registrar.

Digitized by Google

FORM 21.

Notice to Applicant and Original Respondents of Addition of Respondents.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That by order dated the day of it was ordered on the application of the respondents, C.D. & Co., Limited, (a copy whereof is hereto annexed), that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon.]

Dated this day of .

Registrar.

To the Applicant
and
The Respondents,
C.D. & Co., Limited.

FORM 22.

Notice to Parties who are added as Respondents.

[*Heading as in Request for Arbitration.*]

To Messrs. of

(*address and description.*)

TAKE NOTICE—

That by an order of this Court, dated the day of a copy of which order is hereunto annexed, together with a copy of the request and particulars filed by the applicant in this matter, and a copy of the application on which the said order was made, you were ordered to be added as a respondent in the above arbitration.

And further take notice, that the hearing of the above arbitration has been appointed for the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the court-house at upon the day and at the hour above mentioned, such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

Digitized by Google

And further take notice, that if you wish to disclaim any interest in the subject matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of

To

Of

Registrar.

FORM 28.

Notice by Respondent to Third Parties.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

To Mr. , of (*address and description*)

TAKE NOTICE—That A.B. of, &c., , has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C.D. & Co.,

Digitized by Google

Limited, to the said A.B. in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

[*Or* That E.F. of has filed a request for arbitration (a copy whereof is hereto annexed) with respect to the compensation payable to the dependants of A.B. deceased, in respect of the injury caused to the said dependants by the death of the said A.B. which resulted from injury caused to the said A.B. by accident arising out of and in the course of his employment.]

[*or as the case may be; see forms of request for arbitration.*]

The respondents, C.D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A.B. was not immediately employed by the said C.D. & Co., Limited, but was employed by you in the execution of work undertaken by the said C.D & Co., Limited, in respect of which the said C.D. & Co., Limited, had contracted with you for the execution thereof by or under you.

[*Or* on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part [*add, if so,* as the persons who have given security in respect of the liability of the owners of the ship " "] to pay damages in respect thereof.]

[*or as the case may be.*]

[*Or, in case of industrial disease,* The respondents C.D. & Co. Limited, claim to be entitled to contribution from you in respect of the compensation claimed from them, on the ground that the disease mentioned in the applicant's particulars was of such a nature as to be contracted by a gradual process, and that the said A.B. was employed by you during the 12 months previous to the date of disablement or suspension in the employment to the nature of which the disease was due.]

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C.D. & Co., Limited, or your liability to the said respondents, you must appear before the judge [*or* arbitrator] at the time and place mentioned in the notice a copy of which is hereunto annexed.

24

Digitized by Google

In default of your so appearing you will be deemed to admit the validity of any award made in the said arbitration as to any matter which the judge [*or* arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents, C.D. & Co., Limited, whether such award is made by consent or otherwise, and your own liability to indemnify the said C.D. & Co., Limited [*or* to contribute as above mentioned].

Dated this day of

(Signed) C.D. & Co., LIMITED,

To By

Secretary.

of [*Or*

Solicitors for the Respondents,
C.D. & Co., Limited.]

FORM 24.

Award.

[NOTE.—*These forms are intended for use in ordinary cases only. The award in any special case must be settled under Rule* 28, *in accordance with the directions given by the Judge or Arbitrator.*]

(i.) *In Case of Application by Workman.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

Digitized by Google

1. I order that the respondents, C.D. & Co., Limited do pay to the applicant, A.B., the weekly sum of as compensation for personal injury caused to the said A.B. on the day of , by accident arising out of and in the course of his employment as a workman employed by the said respondents, such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above mentioned Act.

2. And I order that the said C.D. & Co. do forthwith pay to the said A.B. the sum of £ being the amount of such weekly payments calculated from the day of until the day of (1) and do thereafter pay the said sum of to the said A.B. on Saturday (2) in every week.

3. And I order that the said C.D. & Co. do pay to the registrar of this Court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co. to the registrar within 14 days from the date of the certificate of the result of such taxation.

(1) First Saturday or other usual pay day after date of award.

(2) Or other usual pay day.

Dated this day of .

Judge [*or* Arbitrator].

(ii.) *In Case of Application by Dependants.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matter submitted to me, I do hereby make my award as follows:—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

Digitized by Google

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ to the dependants of A.B., late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A.B. , which took place on the day of from injury caused to the said A.B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said respondents.

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A.B. , that is to say, J.B., the widow of the said A.B., and (1)

(1) Name the other persons.

3. [*Add, if so found.*] And I declare that the respondent G.H. the of the said A.B. , is not entitled to share in such compensation as a dependant of the said A.B.

4. And I order that the said sum of £ be apportioned between the said J.B. and (2)

in the proportions following, that is to say:—

I apportion the sum of £ to or for the benefit of the said J.B., and the sum of £ to or for the benefit of the said (2)

(2) Specify the persons entitled and the sums apportioned to them.

5. And I order that the said C.D. & Co., Limited, do pay the said sum of £ to the registrar of this Court within 14 days from the date of this award.

6. And I order that on payment to the registrar of the said sum of £ , the registrar do forthwith pay to the said J.B. the sum of £ hereby apportioned to her, [*or* the sum of £ out of the sum of £ hereby apportioned to her, and that the balance of the last-mentioned sum (less the fee for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said J.B., and that out of the sum so invested and the accruing interest thereof the registrar do from time to time until further order pay to the said J.B. the weekly [*or* fortnightly] sum of £ , the first payment to be made on the day of].

7. And I order that on payment to the registrar of the said sum of £ the sums of £ and £ hereby apportioned to or for the benefit of the said

Digitized by Google

respectively (less the fees for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said and respectively, and that interest arising from such investments be from time to time until further order paid to the said J.B. to be by her applied for the maintenance, education, or benefit of the said and respectively.

8. And I order that the said J.B. and the said

or any of them be at liberty to apply to the judge from time to time as they may be advised for any further or other order as to the application of any of the said sums so ordered to be invested and the accruing interest thereof.

9. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxation.

[*Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.*]

Dated this day

Judge [*or* Arbitrator].

(iii.) *In case of Application by Person to whom expenses of Medical Attendance or Burial are due.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

[*Leave space for any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

Digitized by Google

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ for or towards the expenses of medical attendance on and the burial of A.B., late of , deceased, who died on the day of from injury caused on the day of by accident arising out of and in the course of the employment of the said A.B. as a workman employed by the said C.D. & Co., Limited.

2. And I declare that the persons hereinafter named are entitled to share in such compensation, that is to say:

The applicant, E.F., in respect of charges amounting to £ due to [*or* payable by] him for medical attendance on the said A.B. and the respondent, G.H. , in respect of charges amounting to £ due to him for the burial of the said A.B.

3. And I order that the respondents, C.D. & Co., Limited, do pay the said sum of £ to the registrar of this Court within 14 days from the date of this award, and that the said sum of £ be apportioned between and paid to the said E.F. and G.H. in proportion to the amounts due to them respectively as aforesaid.

And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court for the use of the applicant, E.F., and the respondent, G.H., their respective costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co., Limited, to the registrar within 14 days from the date of the certificate of the result of such taxations.

Dated this day of .

Judge [*or* Arbitrator].

[*Note.*—The above forms will serve as guides for framing awards in other cases of arbitration.]

Digitized by Google

FORM 25.

Notice of Day upon which Special Case will be heard.

In the County Court of holden at .

[*Heading as in Special Case.*]

TAKE NOTICE that the judge of this Court will hear the special case stated in the above-named matter at a Court to be holden at on the day of at the hour of in the noon: and that if you do not attend in person or by your solicitor at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of .

Registrar.

[To *The Applicant and Respondents*].

FORM 26.

Application for Order for Detention of Ship.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

The Workmen's Compensation Act, 1906. Section 11.

The Ship " "

Application is hereby made on behalf of of , who alleges that the owners of the ship " " which has been found in the port [*or* river] of [*or* within three miles of the coast of England], are liable as such owners to pay compensation under the Workmen's Compensation Act, 1906, in respect of personal injury by accident arising out of and in the course of his employment caused to of on the day of in the port [*or* harbour] of , and who claims compensation in respect of such injury, and alleges that none of the owners of the said ship reside in the United Kingdom, for an order directe

Digitized by Google

to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or* will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 27.

Undertaking as to Damages.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906. Section 11.

The Ship " "

I the undersigned , of , hereby undertake to abide by any order which may hereafter be made as to damages, in case any person affected by the order to be made on my application for the detention of the ship " " shall sustain any damages by reason of such order which I ought to pay.

Dated this day of .

(Signed)

[*Signature and Address of Applicant.*]

[*To be altered as required, if the undertaking is given by any person other than the applicant.*]

Digitized by Google

FORM 28.

Order for Detention of Ship.

In the County Court of holden at

The Workmen's Compensation Act, 1906.

The Ship " "

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

And that the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England] :

And whereas it has been shown to me, on the application of of , who claims compensation in respect of such injury, that the owners of the said ship are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom:

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay:]

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at

[*or other officer named by the judge.*]

Digitized by Google

FORM 29.

Bond by way of Security.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

The Workmen's Compensation Act, 1906.

The Ship " "

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

And whereas the judge of this Court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law :

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in England or Ireland in which any proceedings may be instituted in respect of the said injury, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said and the sureties, the day of 19 .

Before me,

Registrar.

[*or* Clerk to the Registrar nominated to take affidavits.]

Digitized by Google

FORM 30.

Order of Release.

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " "

You are hereby authorised and directed to release the ship " " now under detention by virtue of an order made on the day of , upon the payment of all costs, charges and expenses attending the custody thereof.

Dated this day of .

Judge.

To the Chief Officer of Customs at

[*or other officer named in the order for detention.*]

FORM 30A.

Solicitor's Undertaking to give Security.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " "

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

Now, therefore, I, *L.M.* , of (*address*) , solicitor for the owners [agent, master, *or* consignee] of the said ship, hereby undertake within days from the date hereof to put in or give security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon.

Dated this day of .

(Signed) *L.M.*

Digitized by Google

FORM 31.

Application for Order for Detention of Ship by Employer claiming Indemnity.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " "

Application is hereby made on behalf of
of
who alleges :—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of : and

2. That the applicant, as the employer of the said has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906 : and

3. That the applicant is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " " on the ground that the said injury was caused by the said ship [*or* sustained on, in, or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment : and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England] : and

5. That none of the owners of the said ship reside in the United Kingdom :

for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master or consignee thereof have indemnified the applicant or paid compensation in respect of the said injury, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Digitized by Google

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or* will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 32.

Order for Detention of Ship on Application of Employer claiming Indemnity.

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " "

Whereas it is alleged by of

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of : and

2. That the said as the employer of the said has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906: and

3. That the said is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment: and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England]:

And whereas it has been shown to me, on the application of the said that the applicant probably is [*or* will become] entitled to be indemnified under the said Act, and that none of the owners of the said ship reside in the United Kingdom:

Digitized by Google

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay] :

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at
[*or other officer named by the judge*].

FORM 88.

Bail Bond by way of Security where Order of Detention made on Application of Employer claiming Indemnity.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged :—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That of as the employer of the said , has paid compensation [*or* has had a claim for compensation made on him] in respect of the said injury under the Workmen's Compensation Act, 1906; and

Digitized by Google

8. That the said is [*or* will become] entitled to be indemnified under that Act by the owners of the ship "
," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship] in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment:

And whereas the judge of this Court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law;

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in England or Ireland in which any proceedings may be instituted in respect of the said injury, or to recover such indemnity, and consent that if the owners, agent, master or consignee of the said ship shall not pay all such compensation, indemnity, and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said
and
the sureties, the day of ,
19 .

Before me,

Registrar.

[*or* Clerk to the Registrar nominated to take affidavits.]

Digitized by Google

FORM 84.

Application for Appointment of new Arbitrator, Schedule II., Paragraph 8.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant

and

C.D. & Co., Limited,
of (*address*)
(*description*) Respondents.

Application is hereby made to the judge on behalf of the above-named to appoint a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or* refusal *or* inability] to act] of the said Mr.

And the applicant hereby requests that a time and place may be fixed for the hearing of the application.

Dated this day of .

Signed

Applicant.

[*or*

Applicant's Solicitor.]

FORM 85.

Summons on Application for Appointment of new Arbitrator.
[*Title as in Application.*]

You are hereby summoned to attend before the judge in chambers at on the day of at the hour of in the noon, on the hearing of an application on the part of for the appointment by the judge of a new

Digitized by Google

arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or* refusal *or* inability to act] of the said Mr. .

And take notice, that in default of your attendance at the time and place above-mentioned, the judge will, on proof of the service of this summons, proceed to hear and dispose of the said application.

Dated this day of .

To

Registrar.

and to his [*or* their]
Solicitor.

FORM 86.

Form of Memorandum under Paragraph 9 of Schedule II.
[*Not to be printed, but to be used as a Precedent.*]

To the Registrar of the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an Arbitration between
A.B. of, &c., Applicant.
and
C.D. & Co., Limited,
of, &c., Respondents.

[*or, where the matter has been decided by agreement without arbitration,*

In the matter of an Agreement between
A.B. of, &c.,
and
C.D. & Co., Limited,
of, &c., .]

Be it remembered, that on the day of personal injury was caused to the above-named A.B. by accident arising out of and in the course of his employment:

And that on the day of the following agreement was come to by and between the said A.B. and the said C.D. & Co., Limited, that is to say:
[*or* And that on the day of the following decision was given

Digitized by Google

by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or* And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said A.B. and the said C.D. & Co., Limited ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

[*or, where death resulted from the accident,*

Be it remembered, that on the day of personal injury was caused to A.B. late of deceased, by accident arising out of and in the course of his employment, and that on the day of the said A.B. died as the result of such injury:

And that on the day of the following agreement was come to by and between C.B. G.B. &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, that is to say:

[*or* And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or* And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by C.B. G.B. , &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed [*add, if so,* The said Mr. attended the arbitration on the day of].

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

Dated this day of .

[*To be signed—*

In the case of an agreement, by the parties or some or one of them, or by their or his solicitor on their or his behalf:

Digitized by Google

In the case of a decision by a committee, by the chairman and secretary on behalf of the committee:

In the case of an award by the arbitrator.]

NOTE.—*This form to be adapted to the circumstances of the case and the matter decided.*

FORM 37.

Notice of Memorandum having been received.

In the County Court of holden at

[*Heading as in Memorandum.*]

TAKE NOTICE, that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum appears to affect you.

I have therefore to request you to inform me within 7 days from this date whether you admit the genuineness of the memorandum, or whether you dispute it, and if so, in what particulars, or object to its being recorded, and if so, on what grounds.

If you do not inform me in due course that you dispute the genuineness of the memorandum or object to its being recorded, it may be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness or object to its being recorded, it will not be recorded, except with your consent in writing, or by order of the judge of this Court.

Dated this day of .

To Registrar.

Digitized by Google

FORM 88.

Notice disputing Memorandum, or objecting to its being recorded.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that the undersigned C.D. & Co., of &c., dispute the genuineness of the memorandum sent to you for registration in the above-mentioned matter in the following particulars:—

[*here state particulars.*]

[*or* TAKE NOTICE, that the undersigned C.D. & Co., of &c., object to the memorandum sent to you for registration in the above-mentioned matter being recorded, on the following grounds:—

[*here state grounds—see particularly Schedule 2, par. 9, proviso (b).*]

Dated this day of .

C.D. & Co., Limited,
by Secretary.

[*or*
Solicitors for C.D. & Co., Limited.]

To
The Registrar.

FORM 89.

Notice that Memorandum is disputed, or of Objection to its being recorded.

[*Heading as in Memorandum.*]

TAKE NOTICE, that the genuineness of the memorandum in the above-mentioned matter left with [*or* sent to] me for registration is disputed by of , a party affected by such memorandum, in the following particulars:

[*here state particulars of dispute.*]

[*or* that of , a party interested in the memorandum in the above-mentioned matter left with [*or* sent to] me for registration objects to the same being recorded, on the following grounds:

[*here state grounds.*]]

Digitized by Google

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of this Court.

Dated this day of .

To Registrar.

FORM 40.

Notice of Application for Registration of Memorandum or for Rectification of Register.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of , at the hour of o'clock in the noon [*in case of notice by solicitor*, on behalf of of], for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter [*or* for an order for the rectification of the memorandum recorded in the above-mentioned matter] by (*state particulars of rectification applied for*),

and for consequential directions, and for costs.

Dated this day of .

Applicant.

[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
and to Messrs.
(his [*or* their] solicitors).

Digitized by Google

FORM 41.

Notice to Parties where Registrar refers the Question of recording a Memorandum of an Agreement to the Judge under Schedule II., Paragraph 9, Proviso (d).

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I have refused to record the memorandum sent to me in this matter for registration, and have referred the matter to the judge, pursuant to proviso (*d*) to paragraph 9 of the second schedule to the Act, it appearing to me that the said memorandum ought not to be registered by reason of—

(*a*) the inadequacy of the lump sum agreed to be paid in redemption of the weekly payment referred to in the memorandum; *or*

(*b*) the inadequacy of the amount of compensation agreed to be paid to , a person under legal disability; *or*

(*c*) the inadequacy of the amount of compensation agreed to be paid to and , dependants; *or*

(*d*) the agreement having been obtained by fraud [*or* undue influence *or* improper means.]

AND FURTHER TAKE NOTICE, that by order of the judge you are hereby summoned to attend before the judge at a Court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of .

Registrar.

To (*all parties concerned*).

Digitized by Google

FORM 42.

Application for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e).

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of in the noon, for an order for the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the day of , pursuant to proviso (*e*) to paragraph 9 of the second schedule to the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means],

and for consequential directions, and for costs.

Dated this day of .

Applicant.
[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
Messrs.
and his [*or* their] Solicitor.

FORM 43.

Notice to Parties where Judge directs Inquiry as to Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e).

In the County Court of holden at .

[*Heading as in Memorandum.*]

WHEREAS it has been made to appear to the judge that an inquiry should be held as to the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the day of , pursuant to proviso (*e*) to paragraph 9 of the second schedule to the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means] :

Digitized by Google

TAKE NOTICE, that you are hereby summoned to attend before the judge at a Court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

AND that if you do not attend either in person or by your solicitor on the day and at the hour above-mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of

Registrar.

To (*all parties concerned*).

FORM 44.

Form of Certificate under Section 1, *Sub-section* 4.

In the County Court of holden at

No. of plaint.

Between

A.B.,
of (*address*)
(*description*) Plaintiff.

and

C.D. & Co., Limited,
of (*address*)
(*description*) Defendants.

And in the matter of the Workmen's Compensation Act, 1906.

I hereby certify that on the day of the above-named plaintiff commenced the above-named action against the above-named defendants claiming

[*here state claim of plaintiff in action.*]

And that on the trial of the said action on the day of it was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which the defendants were not liable in the said action, but that such defendants would have been liable to pay compensation in respect of such injury under, the above-mentioned Act;

Digitized by Google

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ and directed (*state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the Court were caused by the plaintiff bringing the action instead of proceeding under the Act*).

Dated this day of .

Registrar.

FORM 45.

Application for Summons of Medical Referee as Assessor.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

The applicant [*or* respondent] applies to the judge to summon a medical referee to sit with him as an assessor, on the ground that questions are likely to arise in the arbitration as to the condition of the applicant or his fitness for employment [*or as the case may be*], and that it is desirable that the judge should have the assistance of a medical referee in the determination of such questions.

Dated this day of .

To the Registrar of the Court.

(Signed) A.B. ,
Applicant.
or
Solicitor for the Applicant.
[*or as the case may be.*]

I consent to a medical referee being summoned to sit with me as an assessor.

Judge.

Digitized by Google

FORM 46.

Notice of Refusal to summon Medical Referee as Assessor.

[*Heading as in Request for Arbitration.*]

I hereby give you notice that his Honour the Judge of this Court has directed me to inform you that your application for a medical referee to be summoned to sit with the judge as an assessor is refused, the judge being of opinion that the summoning of a medical referee is unnecessary.

Dated this day of .

Registrar.

To

[*the applicant for an Assessor.*]

FORM 47.

Summons to Medical Referee to sit as Assessor.

[*Title as in Request for Arbitration.*]

The day of .

Sir,

You are hereby summoned to attend and sit with the Judge as an assessor at the court-house situate at on the day of at the hour of in the noon.

I am, sir,

Your obedient servant,

To

of

Registrar.

Digitized by Google

FORM 48.

Application for Reference to Medical Referee under Schedule I., Paragraph 15.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A.B. of , against C.D. & Co., Limited, of

[*or, where an arbitration is pending,*

In the matter of an arbitration between A.B. of (*address*) (*description*) Applicant,

and

C.D. & Co., Limited , of (*address*) (*description*) Respondents.]

[*or, where application is made after weekly payment has been settled*

In the matter of an agreement [*or* a decision *or* award *or* certificate] recorded in the above-mentioned Court as to the weekly payment payable to A.B. , of , by C.D. and Co., Limited , of .

Application is hereby made to the Court on behalf of the above-named A.B. and C.D. & Co., Limited, for a reference in the above-mentioned matter to a medical referee pursuant to paragraph 15 of the first schedule to the above-mentioned Act under the following circumstances:—

1. On the day of notice was given by [*or* on behalf of] the above-mentioned A.B. to the above-mentioned C.D. & Co., Limited, , of personal injury caused to the said A.B. by accident arising out of and in the course of his employment, in respect of which injury the said A.B. claims compensation from the said C.D. & Co., Limited, under the said Act.]

[*or, where arbitration is pending,*

1. An arbitration under the said Act is pending between the above mentioned A.B. and the above-mentioned C.D. & Co., Limited, as to the amount of compensation payable to the said A.B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.]

[*or, where weekly payment has been settled,*

1. Under an agreement [*or* a decision *or* award *or* certificate] in the above-mentioned matter, recorded in this Court on the day of , a weekly payment is payable to the above-men-

Digitized by Google

tioned A.B. by the above-mentioned C.D. & Co., Limited, as compensation in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.]

2. The weekly payment claimed by [*or* payable to] the said A.B. is

3. A question has [*or* Questions have] arisen between the said A.B. and the said C.D. & Co., Limited, as to the condition [*or* fitness for employment] of the said A.B. [*or* as to whether [*or* to what extent] the incapacity of the said A.B. is due to the accident], [*or* as to the condition [*or* fitness for employment] of the said A.B. and as to whether [*or* to what extent] the incapacity of the said A.B. is due to the accident], and no agreement can be come to between the said C.D. & Co., Limited, and the said A.B. with reference to such question [*or* questions].

4. The said A.B. has submitted himself for examination by a medical practitioner provided by the said C.D. & Co., Limited, [*or* has been examined by a medical practitioner selected by himself] [*or, if so,* the said A.B. has submitted himself for examination by a medical practitioner provided by the said C.D. & Co., Limited, and has also been examined by a medical practitioner selected by himself], and a copy of the report of the said practitioner is [*or* copies of the reports of the said practitioners are] annexed to this application.

The applicants request that an order may be made referring the matter to a medical referee for his certificate as to the condition of the said A.B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or* for his certificate whether [*or* to what extent] the incapacity of the said A.B. is due to the accident] [*or* for his certificate as to the condition of the said A.B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [*or* to what extent] the incapacity of the said A.B. is due to the accident.]

Dated this day of .

(Signed)

Applicant.

[*or* Applicant's Solicitor.]

C.D. & Co., Limited,

by Secretary,

[*or*

Solicitors for C. D. & Co., Limited.]

To the Registrar.

Digitized by Google

FORM 49,

Order of Reference, Schedule I., Paragraph 15.

In the County Court of holden at

[*Heading as in Application.*]

On the application of A.B. of and C.D. & Co. Limited, of (a copy of which is hereto annexed), I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*name of workman*), and to give his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or* his certificate whether [*or* to what extent] the incapacity of the said is due to the accident] [*or* his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [*or* to what extent] the incapacity of the said is due to the accident].

Copies of the reports of the medical practitioners by whom the said has been examined are hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situated at on or before the day of .

Dated this day of .

Registrar.

Digitized by Google

FORM 50.

Order on Injured Workman to submit himself for examination by Medical Referee.

In the County Court of holden at .

[*Heading as in Application.*]

To A.B. , of [*address and description*].

TAKE NOTICE, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine you in accordance with the application in the above-mentioned matter for a reference to a medical referee.

You are hereby required to submit yourself for examination by the referee [*add, where workman is in a fit condition to travel*, and to attend for that purpose at such time and place as may be fixed by him].

Dated this day of .

Registrar.

FORM 51.

Notice to Parties of Certificate of Medical Referee.

In the County Court of holden at .

[*Heading as in Application.*]

TAKE NOTICE, that I have received the certificate of the medical referee appointed in this matter, and that you may inspect the same during office hours at my office situate at , and may on request and at your own cost be furnished with or take a copy thereof.

Dated this day of .

To Registrar.
and

Digitized by Google

FORM 52.

Notice of Application for Suspension of Right to Compensation or to take or prosecute Proceedings in relation to Compensation, or of right to Weekly Payments, under Schedule I., Paragraph 4, Paragraph 14, or Paragraph 15, and Rule 55.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A.B. of against C.D. & Co., Limited, of

[*or, where an arbitration is pending,*

In the matter of an arbitration between
A.B.
of (*address*)
(*description*) Applicant,
and
C.D. & Co., Limited,
of (*address*)
(*description*) Respondents.]

[*or, where application is made after weekly payment has been settled,*

In the matter of an agreement [*or* a decision *or* an award *or* a certificate] recorded in the above-mentioned court as to the weekly payment payable to A.B. of by C.D. & Co., Limited, of .]

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of in the noon [on behalf of Messrs. C.D. and Co., Limited, of, &c.] for an order suspending your right to compensation in the above-mentioned matter and to take or prosecute any proceedings under the above-mentioned Act in relation to compensation [*or* suspending your right to weekly payments in the above-mentioned matter], on the ground that you refuse to submit yourself to medical examination as required by me [*or* by the said C.D. & Co., Limited], in accordance with paragraph 4 [*or* paragraph 14] of the first schedule to the Act [*or* that you obstruct the medical examination required by me [*or* by the said C.D. & Co., Limited,] in accordance with paragraph 4 [*or* paragraph 14] of the first schedule to the Act], [*or* on the ground that you refuse to submit yourself for examination by a medical referee as ordered under paragraph 15 of the first schedule

Digitized by Google

to the Act, *or* that you obstruct the examination by a medical referee ordered under paragraph 15 of the first schedule to the Act], and for consequential directions, and for costs.

Dated this day of .

To A.B., of
and to Messrs.
his Solicitors

(Signed) C.D. & Co., Limited,
by Secretary.
[*Or*
Solicitors for C.D. & Co., Limited.]

FORM 58.

Præcipe for Payment into Court under Schedule I., Paragraph 5.

[*Not to be printed, but to be used as a precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an Arbitration between
A.B.
of, &c. Applicant
and
C.D. & Co., Limited,
of, &c. Respondents
or
[In the matter of an Agreement between
A.B.
of, &c.
and
C.D. & Co. Limited,
of, &c.]
or
[In the matter of a Certificate given in an action in (*state court*).
Between
A.B.
of, &c. Plaintiff.
and
C.D. & Co., Limited,
of, &c. Defendants]
[*or as the case may be.*]

Digitized by Google

TAKE NOTICE, that C.D. & Co., Limited, of [*or* Messrs. solicitors for C.D. & Co., Limited, of do pay into court (*when paid by solicitors, add* at the request and by the authority of the said C.D. & Co., Limited)], the sum of (*state sum in letters*) , being the sum awarded [*or* agreed *or* directed] to be paid by the said C.D. & Co., Limited, as compensation in the above-mentioned matter.

Dated this day of

(Signed) C.D. & Co., Limited,
by ,
Secretary.

[*Or*

Solicitors for C.D. & Co., Limited.]

To the Registrar.

Received the above-mentioned sum of .

Registrar.
[*Date*]

[*Forms* 58A, 58B, *and* 58C *were added by the amended rules of March* 14, 1908, *and are set out*, post, *in Appendix J.*]

FORM 54.

Application for Order for Payment into Court of Weekly Payment payable to Person under Disability. Schedule I., Paragraph 7.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at on the day of , at the hour of in the noon, for an order that the weekly payment payable in the above-mentioned matter to a person under legal disability [*or* to me] be during his [*or* my] disability paid into court, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar
and (*to the parties interested*).

Digitized by Google

FORM 55.

Application for Variation of Order under Schedule I., Paragraph 9.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at a Court to be holden on the day of , at the hour of in the noon, for an order that the order of the court [*or* the award] made in the above-mentioned matter on the day of as to the apportionment of the sum paid as compensation among the dependants of A.B. deceased [*or* as to the manner in which the sum payable to a dependant of A.B. , deceased, should be invested, applied or otherwise dealt with] may be varied by directing [*here state variation claimed by applicant*]

and for consequential directions.

And further take notice that the circumstances in which this application is made are

(*State particulars.*)

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

To the Registrar,
and to (*all persons interested*).

FORM 56.

Application by Workman intending to cease to reside in the United Kingdom for Reference to Medical Referee under Schedule I., Paragraph 18.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an agreement [*or* a decision *or* award *or* certificate] recorded in the above-mentioned Court as to the weekly payment payable to A.B. of
by C.D. & Co., Limited, of

Digitized by Google

TAKE NOTICE, that A.B. of , to whom under an agreement [*or* a decision *or* an award *or* a certificate] in the above-mentioned matter recorded in this Court on the day of a weekly payment of is payable by the above-mentioned C.D. & Co., Limited, as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment, intends to cease to reside in the United Kingdom;

And that the said A.B. intends to apply to the registrar at , on the day of , at the hour of in the noon, for an order referring to a medical referee the question whether the incapacity of the said A.B. resulting from the injury is likely to be of a permanent nature.

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

To the Registrar of the Court
and to (*the employer*).

[*For Form 56A see amended rules*, post, *Appendix J.*]

FORM 57.

Order of Reference, Schedule I., Paragraph 18.

In the County Court of holden at .

On the application of of
(a copy of which is hereto annexed),

I hereby appoint Mr. of ,
one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*name of workman*) , and to give his certificate as to whether the incapacity of the said (*name of workman*)
resulting from the injury is likely to be of a permanent nature.

The said , who is now at
has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

Digitized by Google

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situate at on or before the day of , specifying therein the nature of the incapacity of the said , and whether the same is total or partial.

Dated this day of .

Judge [*or* Registrar].

[*For Form 57A see amended rules*, post, *Appendix J.*]

FORM 58.

[*To be printed on thick blue foolscap.*]

Certificate of Identity.

[TO BE CAREFULLY PRESERVED.]

NOTICE.—THIS CERTIFICATE IS NO SECURITY WHATEVER FOR A DEBT.

No. of Certificate .

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

This is to certify that A.B. late of (*address and description*), is entitled to a weekly payment of from (*name and address of employer*) as compensation payable to the said A.B. in respect of personal injury caused to him by accident arising out of and in the course of his employment, such weekly payment to continue during the total or partial incapacity of the said A.B. for work :

And that the description of the said A.B. and his incapacity for work, as certified by the medical referee appointed in this matter, are as follows :—

Age,
Height,
Hair, Eyes,
Nature of incapacity,

[*Describe nature of incapacity, and whether the same is total or partial, as in certificate of medical referee.*]

Dated this day of .

Registrar.

Digitized by Google

[*For Form* 58A *see amended rules*, post, *Appendix J.*]

FORM 59.

Notice to be given to Workman intending to cease to reside in the United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that if you desire to obtain payment of the weekly payments payable to you under the award [memorandum *or* certificate] hereto annexed while you are residing out of the United Kingdom, you must, at intervals of three months from the date up to which such payments have been made, submit yourself to examination by a medical practitioner in the place where you are residing, and produce to him the copy of the certificate of the medical referee and the certificate of identity hereto annexed; and you must obtain from such medical practitioner a certificate in the form hereto annexed that he has examined you, and that your incapacity resulting from the injury specified in the certificate of the medical referee continues: and such certificate must be verified by the medical practitioner by declaration in your presence before some such person as hereinafter mentioned.

You must also attend before some such person as hereinafter mentioned, and make a declaration in the form hereto annexed that you are the same person as mentioned in the copy of the certificate of the medical referee and in the certificate of identity hereto annexed, and in the certificate of the medical practitioner by whom you have been examined, producing to such person the copy and certificates above mentioned.

You must then transmit to me, at my office, situate at
the certificate of the medical practitioner by whom you have been examined, and your declaration, together with a request for transmission to you of the amount of the weekly payment due to you, specifying the place where and the manner in which the amount is to be transmitted, according to the form hereto annexed, which request must be signed in your own handwriting.

The persons before whom a certificate may be verified or a declaration made are:

1. Any person having authority to administer an oath in the place in which you reside.

Digitized by Google

2. Any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign place in which you reside, or any British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent exercising his functions in any foreign place in which you reside.

Dated this day of .

Registrar.

To A.B.

of (*address and description*).

FORM 60.

Form of Medical Certificate to be obtained by Workman residing out of the United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

I (*name, address, and medical qualification of medical practitioner*) hereby certify that I have this day examined A.B. of , whom I conscientiously believe to be the same person as A.B. of , described in the copy certificate of the medical referee in the above-mentioned matter, dated the day of , and in the certificate of identity dated the day of produced to me by the said A.B. ; and that in my opinion the incapacity of the said A.B. resulting from the injury described in the said certificate of the medical referee still continues.

Dated this day of .

(Signature)

Declared at this day of , in the presence of the said A.B. , the copy of the certificate of the medical referee and the certificate of identity above mentioned being at the same time produced,

Before me—

[*Signature and description of person before whom the declaration is made.*]

Digitized by Google

FORM 61.

Declaration of Identity by Workman residing out of the United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

I, A.B. of hereby declare that I am the same person as A.B. of described in the copy of the certificate of the medical referee in the above-mentioned matter, dated the day of , now produced by me, and in the certificate of identity, dated the day of , now produced by me, and the same person as A.B. of described in the certificate of declared by the said in my presence on the day of , and now produced by me.

(Signed)
A.B.

Declared at this day of , the certificates above mentioned being at the same time produced,

Before me—

[*Signature and description of person before whom the declaration is made.*]

FORM 62.

Request for Transmission of Amount of Weekly Payments by Workman residing out of United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

Sir,

I herewith enclose medical certificate and affidavit of identity, and request that the amount of the weekly payments due to me in the above-mentioned matter may be transmitted to me at

(*give full address*)

Digitized by Google

(*state how transmission to be made, as*)—

by Post Office Order payable at

(*name of Post Office*)

or by banker's draft on the

(*name and address of Bank*)

I am, Sir,
Your obedient Servant,
A.B.

[*To be signed by the workman in his own handwriting.*]

To the Registrar
of the County Court of
holden at

[*add address of Registrar's office.*]

FORM 68.

Notice by Registrar to Employer of Receipt of Medical Certificate and Declaration of Identity.

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that I have received proof of identity and of continuance of incapacity in the above-mentioned matter.

And I have to request you to transmit the sum of , being the amount of the weekly payments payable to A.B. under the above-mentioned award [memorandum *or* certificate] from (*the date to which they were last paid*) to (13 *weeks from that date*) to me, to be by me remitted to the said A.B.

Dated this day of .

Registrar.

To (*name and address of employer*).

Digitized by Google

FORM 64.

Notice of Application for Determination of Amount of Costs under Schedule II., Paragraph 14.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Award or Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of o'clock in the noon, to determine the amount of costs to be paid to me as solicitor [*or* agent] for you A.B. in the above-mentioned matter;
and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you the said A.B. in the above-mentioned matter,
and for consequential directions.

Dated this day of .

Applicant.

To the Registrar of the Court,
and to
A.B.
of

FORM 65.

Execution on Award or Memorandum or Certificate.

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge] whereby it was ordered [*state operative parts of award*] :

Digitized by Google

[*or* Whereas on the day of
a memorandum was recorded in this Court of an agreement [*or* a decision *or* an award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*];]

[*or* Whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*];]

And whereas default has been made in payment of the sum of £ payable by the said into court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate];

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of [*name the party against whose goods execution is issued*] wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due under the said award [*or* memorandum *or* certificate], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank), and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the Registrar of this Court,

Digitized by Google

and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 19

By the Court,

Registrar.

To the High Bailiff of the said Court,
and others the Bailiffs thereof.

	£	s.	d.
Amount in payment whereof default has been made			
Poundage for issuing this warrant			
Total amount to be levied [with fees for execution of warrant, as indorsed hereon].			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said

Application was made to the Registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

SEE BACK.

[*To be indorsed on every warrant of execution.*]

51 & 52 Vict. c. 43. s. 155.

FEES FOR THE EXECUTION OF THIS WARRANT.

Order XXV., Rule 17.

The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) is SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10*s.* per day although the value may exceed 20*l.*, and, in addition, for feeding animals, the actual cost thereof.

If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

Digitized by Google

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others:—

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, if such value does not exceed ten pounds, and EIGHTPENCE IN THE POUND on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act, 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

[*This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule 66, paragraph* (*e*), *for costs.*]

Digitized by Google

FORM 66.

Judgment Summons on Award, Memorandum, or Certificate.

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge], whereby it was ordered [*state operative parts of award*]:

[*or* Whereas on the day of a memorandum was recorded in this Court of an agreement [*or* a decision *or* an award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*]:]

[*or* Whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*]:]

Digitized by Google

And whereas default has been made in payment of the sum of £ payable by you the above-named into court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate]:

You the said are therefore hereby summoned to appear personally in this Court at [*place where court holden*] on the day of 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the award [*or* memorandum *or* certificate] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default, or why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883.

Dated this day of 19 .

Registrar.

To [*name and address of the party against whom the summons is issued.*]

	£	s.	d.
Amount in payment of which default has been made			
Costs of this summons			
Total sum due			

NOTE.—*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule* 27, *against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own;* see *Form* 184 *in the Appendix to the County Court Rules. If an order of commitment is made it should be according to Form* 189 *or Form* 191 *in the said Appendix, such form being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*

Digitized by Google

FORM 67.

Register.

The Workmen's Compensation Act, 1906.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1	In the matter of arbitration between A.B., of, &c., Applicant, and C.D. & Co., Limited, of, &c., Respondents.	July 11, 1907	Request for arbitration filed, and copy sent to judge.
		July 20, 1907	Appointment of Mr. as arbitrator.
		July 24, 1907	Copy request sent to arbitrator.
		July 29, 1907	Day for arbitration fixed.
		July 29, 1907	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.
		Aug. 5, 1907	Respondents' answer filed; copies sent to arbitrator and applicant.
		Aug. 8, 1907	Application by applicant for discovery; order made.
		Aug. 15, 1907	Respondents' affidavit filed.
		Aug. 19, 1907	Five subpœnas issued on application of applicant's solicitor.
		Aug. 23, 1907	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Sept. 5, 1907	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Oct. 16, 1907	Further hearing. Award made as follows (enter minute of award).
		Oct. 23, 1907	Costs of applicant taxed at £ .
		Nov. 5, 1907	£ for costs paid into Court by respondents.
		Nov. 11, 1907	£ for costs paid to applicant's solicitor.
2	In the matter of an agreement between A.B., of , and E.F. & Co., Limited, of, &c.	Oct. 7, 1907	Memorandum of agreement as to compensation, signed by solicitor of A.B., left to be recorded.
		Oct. 8, 1907	Notice and copy memorandum sent by post to E.F. & Co., Limited.
		Oct. 10, 1907	Notice received from E.F. & Co., Limited, disputing memorandum.
		Oct. 10, 1907	Notice sent to A.B.'s solicitor, that memorandum is disputed, and will not be recorded without consent in writing of E.F. & Co., Limited, or order of Judge.
		Oct. 15, 1907	Application on behalf of A.B. that memorandum be recorded.
		Oct. 22, 1907	Application heard, and order made that memorandum be recorded with alterations.
		Oct. 24, 1907	Memorandum recorded as follows [set out memorandum].
		Oct. 31, 1907	Costs of A.B. taxed and allowed at £
		Nov. 18, 1907	Execution issued for costs.
			&c., &c., &c.

NOTE.—*Similar entries to be made as to all matters required to be recorded.*

Digitized by Google

We, William L. Selfe, William Cecil Smyly, Robert Woodfall, Thomas C. Granger, and H. Tindal Atkinson, being the five judges of the County Courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph twelve of the Second Schedule to the Workmen's Compensation Act, 1906, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Wm. L. Selfe.
William Cecil Smyly.
R. Woodfall.
T. C. Granger.
H. Tindal Atkinson.

I allow these Rules,

Loreburn, C.

The 1st of June, 1907.

Digitized by Google

APPENDIX C

Treasury Order, dated May 30, 1907, regulating Fees in County Courts.

In pursuance of the powers given by the County Courts Act, 1888, and of all other powers enabling us in this behalf, We the undersigned, being two of the Commissioners of His Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that on and after the 1st day of July, 1907, the following alterations in the Treasury Order regulating fees in County Courts, dated the 30th day of December, 1908, shall have effect.

Joseph A. Pease.
J. Herbert Lewis.

I approve of this Order.
Loreburn, C.

Schedule A.

Paragraph 46 is hereby annulled, and the following paragraph shall stand in lieu thereof. Conf. Act, Sch. 2, par. 18.

46.—(*a*) No court fee shall be payable under this Schedule by any party in respect of any proceedings by or against a workman under the Workmen's Compensation Act, 1906, or the Workmen's Compensation Rules, 1907, in the County Court prior to the award.

(*b*) On an application for the settlement of any matter by arbitration under the said Act and Rules, when such application is not a proceeding by or against a workman, plaint and hearing fees shall be payable as in an ordinary action, and the poundage shall be calculated as upon a claim for a sum of twenty pounds.

(*c*) Where a notice of claim to contribution or indemnity is filed under the said Act and Rules, a fee shall be paid on an award on such claim, or on the hearing of such claim, in like manner as on entering judgment on a default summons under paragraph 5, or the hearing of an action, as the case may be.

Digitized by Google

(*d*) In proceedings under the said Act and Rules for the enforcement of an award, memorandum, or certificate, or an order for payment of costs, the same fees shall be taken as on the like proceedings for the enforcement of a judgment for the like amount given in an action, less, in any case in which fees for the issue service or execution of any process are prescribed by Schedule B, the amount of such fees.

(*e*) On interpleader proceedings arising out of an execution issued for the enforcement of an award, memorandum, or certificate or an order for payment of costs under the said Act and Rules, fees shall be paid in like manner as on interpleader proceedings arising out of an execution issued in an action.

Schedule B.—Part I.

GENERAL.

REGISTRAR'S FEES.

The words "The Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907," shall be substituted for the words "The Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900," in paragraphs 8 and 9.

Paragraph 26 is hereby annulled, and the following paragraph shall stand in lieu thereof.

26. On proceedings under the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907.

(N.B.—*These fees with the exception of Nos. 6 and 7 are not to be taken in respect of proceedings by or against a workman prior to the award.*)

		£	*s.*	*d.*
1.	On the filing of a special case under Rule 32	0	5	0
2.	On an order for the detention of a ship, an order of release, a bail bond, or an affidavit of justification, under the Workmen's Compensation Act, 1906, or the Shipowners Negligence (Remedies) Act, 1905 ...	0	7	6
3.	On an Order adding a respondent under Rule 39 (4) ...	0	4	0
4.	On an application to rectify the register or to remove a record from the register under Schedule 2, par. 9(c) or (e), and Rule 48 or Rule 50	0	4	0

Digitized by Google

		£	s.	d.
5.	For preparing a Certificate under Section 1, Subsection 4 and Rule 51	0	5	0
6.	On an application for a reference to a medical referee under Schedule 1, paragraph 15, the fee prescribed by Rule 54 (9)			
7.	On a reference to a medical referee in accordance with regulations made by the Secretary of State pursuant to Section 8 (1) (*f*)	0	10	0
8.	On an application for the suspension of the right to compensation or to take proceedings, or of the right to weekly payments, under Schedule 1, pars. 4, 14 or 15, and Rule 55	0	4	0
9.	On an application for investment, &c., under Schedule 1, par. 5, and Rule 56 (8) or Rule 59	0	4	0
10.	On an application for the payment of weekly payments into Court under Schedule 1, par. 7, and Rule 57 (8)	0	4	0
11.	On an application for the variation of an Order under Schedule 1, par. 9, and Rule 58	0	4	0
12.	For every investment made by a registrar, including the payment out or application of a sum allotted to any person by weekly or other periodical payments (charged once only, and to be deducted from the sum ordered to be invested or allotted). For every £10, or part of £10, invested, but so that the total fee shall not exceed 50/-	0	5	0
13.	On an application for a reference to a medical referee under Schedule 1, par. 18, and Rule 60	0	4	0
14.	For a certificate of identity under Rule 60 (*b*) (*c*) ...	0	5	0
15.	For receiving and forwarding any sum due to a workman residing out of the United Kingdom under Rule 60 (13) (to be deducted from the sum to be forwarded)	0	5	0
16.	For every taxation of the costs of an award, or between third parties and other parties to an arbitration ...	0	10	0
17.	For every other taxation of costs	0	5	0
18.	On an application to the judge under Rule 65 (8 to 5) at a date subsequent to the hearing of the arbitration	0	4	0
19.	On an application to the judge under Rule 66 (*e*) other than an application for an order for execution to issue	0	4	0

Digitized by Google

		£	s.	d.
20.	For examining every affidavit in support of an application for issue of execution or a judgment summons under Rules 67 (2) or 68 (2)	0	1	6
21.	On an application to set aside or vary an award or order under Rule 70	0	4	0
22.	For every Office copy or certified copy of documents filed or records made in reference to any matter, per folio	0	0	4
23.	For every sitting under Rule 85...	0	10	0
24.	On any other proceeding not herein specified, for which, if such proceeding were taken in an action, a fee would be payable, the fee which would be payable if such proceeding were taken in an action.			

High Bailiff's Fees.

The words "the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907," shall be substituted for the words "the Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900," in paragraphs 41 and 42.

42A. Where the high bailiff is directed to detain a ship under the Workmen's Compensation Act, 1906, or the Shipowners Negligence (Remedies) Act, 1905, the same fees for execution of the order for detention and for keeping possession of the vessel as for executing a warrant of arrest and keeping possession of a vessel in an Admiralty action where the amount claimed exceeds £100, being part of the costs, charges and expenses attending the custody of the ship (Rule 87 (8)).

42B. On any proceeding under the Workmen's Compensation Act, 1906, and the Workmen's Compensation Rules, 1907, not herein specified (not being a proceeding by or against a workman prior to the award) for which, if such proceeding were taken in an action, a fee would be payable, the fee which would be payable if such proceeding were taken in an action.

Digitized by Google

APPENDIX D

Regulations, dated July 1, 1907, made by the Chief Registrar of Friendly Societies under the Workmen's Compensation Act, 1906.

In pursuance of the powers vested in me by the above-mentioned statute, I, James Duncan Stuart Sim, Chief Registrar of Friendly Societies, hereby make the following Regulations:—

1. Every application for certificate to a scheme under section 8 of the Workmen's Compensation Act, 1906 (in these regulations termed "the Act"), shall be in Form A annexed to these regulations, and shall be accompanied by the documents mentioned in such Form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

2. Every application for re-certification, under section 15 of the Act, of a scheme certified under the Workmen's Compensation Act, 1897, and in force on 1st July, 1907, shall be in Form C, and shall be accompanied by the documents mentioned in such Form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

3. Every application for certificate to a partial amendment of a scheme shall be in Form D, and shall be accompanied by the documents mentioned in such Form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

4. Every application for renewal of certificate to a scheme shall be in Form E and shall be accompanied by the documents mentioned in such form. If a scheme includes the workmen of more than one employer a separate application shall be made by each employer.

5. Every complaint by or on behalf of workmen shall be as nearly as may be in Form F.

Digitized by Google

6. The following fees shall be payable in advance for matters to be transacted and for the inspection of documents under the Act:—

	£	s.	d.
For every certificate to a scheme, for the renewal of certificate to a scheme, or for the recertification (under section 15 of the Act) of a scheme, when the number of workmen in the employment—			
does not exceed 100	1	0	0
exceeds 100, but does not exceed 500	2	0	0
„ 500 „ „ 1,000... ...	3	0	0
„ 1,000	5	0	0
For every certificate to a partial amendment of a scheme	1	0	0
(In any of the above cases when a scheme includes the workmen of more than one employer the fee will be payable by each employer in accordance with the number of workmen in his employment.)			
For every determination as to distribution of funds on expiration or revocation of certificate to a scheme, when the amount for distribution			
does not exceed £500	5	0	0
exceeds £500	Not exceeding 1% of the amount for distribution.		
For every document required to be signed by a Registrar or to bear the seal of the Central Office and not chargeable with any other fee to the Registrar	0	2	6
For every inspection on the same day of documents (whether one or more) in the custody of the Registrar relating to one and the same scheme ...	0	1	0
For every copy or extract of any document in the custody of the Registrar, not exceeding 216 words	0	1	0
And, if exceeding that number, 4*d.* per folio of 72 words (in addition to the fee, if any, for the signature of a Registrar or seal of the Central Office).			

J. D. Stuart Sim,
Chief Registrar of Friendly Societies.

1st July, 1907.

Digitized by Google

FORM A.

Workmen's Compensation Act, 1906.

Application for Certificate to Scheme.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

The total number of workmen in the employment is , and at a ballot, taken on , 19 , of such workmen voted in favour of the scheme, an abstract of which—with a notification that any workman objecting to the same was at liberty to communicate his views to the Registrar of Friendly Societies, 28, Abingdon Street, London, S.W. (*or as the case may be*)—was posted in a conspicuous position at all the works for a period of at least fourteen days immediately preceding the date of such ballot.

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, &c., should be made in the scheme.

The scheme includes (*or* does not include) other employers and their workmen.

The following is a comparison of the provisions of the scheme with those of the Act:—

—	SCALE OF COMPENSATION.	
	By Act.	By Scheme.
Where death results from the injury—		
(*a*) If the workman leaves any dependants wholly dependent upon his earnings.	(*a*) £150 to £300, subject to the conditions mentioned in the Act.	(*a*)
(*b*) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	(*b*) Not exceeding (*a*).	(*b*)
(*c*) If the workman leaves no dependants.	(*c*) Not exceeding £10.	(*c*)

Digitized by Google

—	Scale of Compensation.	
	By Act.	By Scheme.
Where total incapacity for work results from the injury—		
(*a*) All cases other than those under (*b*)	(*a*) Not exceeding 50 per cent. of average earnings and not exceeding £1 per week, but no compensation for first week if the incapacity lasts less than two weeks.	(*a*)
(*b*) If the workman is under 21 years of age and his average weekly earnings are less than 20s.	(*b*) Not exceeding average earnings and not exceeding 10s. per week, but no compensation for first week if the incapacity lasts less than two weeks.	(*b*)
Where partial incapacity for work results from the injury.	As for total incapacity, but not exceeding the difference between average earnings before incapacity and average earnings while in receipt of compensation.	

The following are the benefits provided by the scheme other than those of the Act:—

The contribution of the employer to the scheme is to be

The contribution of the workmen to the scheme is to be

The scheme contains provisions enabling a workman to withdraw from the same, but does not contain any obligation upon the workmen to join the scheme as a condition of their hiring.

With this application are sent—

(*a*) Two printed copies of the scheme, each stitched in covers and signed by the applicants;

(*b*) An actuarial report on the scheme by Mr. ;

Digitized by Google

(*c*) A statutory declaration in Form B verifying the result of the ballot, &c.;

(*d*) A statement showing (1) the views of the general body of the workmen as to the scheme, and (2) how such views were ascertained; and

(*e*) The fee of* prescribed by the Regulations.

* *See* regulation 6.

The views of the employer are as follows:—

The views of the workmen are as follows:—

} Workmen.

Employer.

Date , 19 .

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

FORM B.

Workmen's Compensation Act, 1906.

Declaration verifying result of Ballot, &c.

(This declaration is to be made either by the employer, by the manager of the works, or by some other responsible person.)

Full name of employer

I, , of , do solemnly and sincerely declare that at a ballot taken on , 19 , after fourteen days' notice thereof had been given, out of the total number of workmen in the employment of voted in favour of the scheme, application for* which is attached to this declaration, and that on the date of the said ballot the total number of workmen in the said employment was .

* Insert "certificate to," "re-certification of," *or as the case may be.*

Digitized by Google

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Signature of declarant.

†Taken and received before me, one of His Majesty's Justices of the Peace for the County of , at , in the said County, this day of , 19 .

† This is to be altered as the case requires where any declaration is made before a Borough Magistrate or Commissioner for Oaths.

FORM C.

Workmen's Compensation Act, 1906.

Application for re-certification of a Scheme certified under the Act of 1897.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

This scheme was certified on , under the Workmen's Compensation Act, 1897, the number of the certificate being , and was in force on 1st July, 1907.

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, &c., should be made in the scheme.

The total number of workmen in the employment is , and at a ballot, taken on , 190 , of such workmen voted in favour of the scheme now submitted, an abstract of which—with a notification that any workman objecting to the same was at liberty to communicate his views to the Registrar of Friendly Societies, 28, Abingdon Street, London, S.W. (*or as the case may be*)—was posted in a conspicuous position at all the works for a period of at least fourteen days immediately preceding the date of such ballot.

The scheme includes (*or* does not include) other employers and their workmen.

The following is a comparison of the provisions of the scheme now submitted with those of the scheme as certified and with those of the Act :—

Digitized by Google

	Scale of Compensation.		
	By Act.	By Scheme.	
		As now submitted.	As already certified.
Where death results from the injury—			
(*a*) If the workman leaves any dependants wholly dependent upon his earnings.	(*a*) £150 to £300, subject to the conditions mentioned in the Act.	(*a*)	(*a*)
(*b*) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	(*b*) Not exceeding (*a*).	(*b*)	(*b*)
(*c*) If the workman leaves no dependants.	(*c*) Not exceeding £10.	(*c*)	(*c*)
Where total incapacity for work results from the injury—			
(*a*) All cases other than those under (*b*).	(*a*) Not exceeding 50 per cent. of average earnings and not exceeding £1 per week, but no compensation for first week if the incapacity lasts less than two weeks.	(*a*)	(*a*
b) If the workman is under 21 years of age and his average weekly earnings are less than 20s.	(*b*) Not exceeding average earnings and not exceeding 10s. per week, but no compensation for first week if the incapacity lasts less than two weeks.	(*b*)	(*b*)

Digitized by Google

	Scale of Compensation.		
	By Act.	By Scheme.	
		As now submitted.	As already certified.
Where partial incapacity for work results from the injury.	As for total incapacity, but not exceeding the difference between average earnings before incapacity and average earnings while in receipt of compensation.		

The following are the benefits provided by the scheme other than those of the Act—

The contribution of the employer to the scheme is to be

The contribution of the workmen to the scheme is to be

The scheme contains provisions enabling a workman to withdraw from the same, but does not contain any obligation upon the workmen to join the scheme as a condition of their hiring.

With this application are sent—

(*a*) Two printed copies of the scheme, each stitched in covers and signed by the applicants;

(*b*) An actuarial report on the scheme by Mr.

(*c*) A statutory declaration in Form B verifying the result of the ballot, &c.;

(*d*) A statement showing (1) the views of the general body of the workmen as to the scheme, and (2) how such views were ascertained; and

(*e*) The fee of * prescribed by the Regulations.

* *See* regulation 6.

The views of the employer are as follows:—

Digitized by Google

The views of the workmen are as follows:—

Workmen.

Employer.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date , 1907.

FORM D.

Workmen's Compensation Act, 1906.

Application for Certificate to partial amendment of Scheme.

Full name and address of employer

Number of scheme

Date of certificate to scheme , 19 .

Application for certificate to an amendment of the above scheme is made by the undersigned employer and five workmen.

With this application are sent—

(*a*) A printed copy of the scheme as certified, marked to show where the alterations occur and what they are;

(*b*) Two printed copies of the amendment, each signed by the applicants;

(*c*) A statement showing (1) the views of the general body of workmen and (2) how such views were ascertained; and

(*d*) The fee of £1 prescribed by the Regulations.

The views of the general body of workmen are as follows:—

Workmen.

Employer.

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

Date , 19 .

Digitized by Google

FORM E.

Workmen's Compensation Act, 1906.

Application for renewal of Certificate to Scheme.

Full name and address of employer

Nature of employment

Situation of works

This application is made by the undersigned employer and five workmen.

If the scheme includes other employers and their workmen a separate application must be made by each employer and provision for administration, &c., should be made in the scheme.

The total number of workmen in the employment is , and the number contracting out under the scheme is .

The scheme includes (*or* does not include) other employers and their workmen.

(If any modification of the scheme is now proposed, the following comparative statement should be filled in).

The following is a comparison of the provisions of the scheme now submitted with those of the Act :—

—	Scale of Compensation.		
	By Act.	By Scheme.	
		As certified.	Proposed alterations.
Where death results from the injury—			
(*a*) If the workman leaves any dependants wholly dependent upon his earnings.	(*a*) £150 to £300, subject to the conditions mentioned in the Act.	(*a*)	(*a*)
(*b*) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings.	(*b*) Not exceeding (*a*).	(*b*)	(*b*)
(*c*) If the workman leaves no dependants.	(*c*) Not exceeding £10.	(*c*)	(*c*)

Digitized by Google

—	Scale of Compensation.		
	By Act.	By Scheme.	
		As certified.	Proposed alterations.
Where total incapacity for work results from the injury—			
(*a*) All cases other than those under (*b*).	(*a*) Not exceeding 50 per cent. of average earnings and not exceeding £1 per week, but no compensation for first week if the incapacity lasts less than two weeks.	(*a*)	(*a*)
(*b*) If the workman is under 21 years of age and his average weekly earnings are less than 20s.	(*b*) Not exceeding average earnings and not exceeding 10s. per week, but no compensation for first week if the incapacity lasts less than two weeks.	(*b*)	(*b*)
Where partial incapacity for work results from the injury.	As for total incapacity, but not exceeding the difference between average earnings before incapacity and average earnings while in receipt of compensation.		
Benefits other than those of the Act			
Contributions of employer...			
Contributions of workmen			

With this application are sent—

(*a*) Two printed copies of the scheme, each stitched in covers and signed by the applicants;

Digitized by Google

(*b*) An actuarial report on the working of the scheme during the preceding five years, by Mr. ;

* The Registrar may require a ballot if he thinks fit.

*(*c*) A statement showing (1) the views of the general body of the workmen as to the scheme, and (2) how such views were ascertained; and

† *See* regulation 6.

(*d*) The fee of† prescribed by the Regulations.

The views of the employer are as follows:—

The views of the workmen are as follows:—

If the employer is a body corporate the seal of the corporation should be affixed and duly witnessed in the space provided for the signature.

} Workmen.

Employer.

Date , 19 .

FORM F.

Workmen's Compensation Act, 1906.

Form of Complaint of Workmen.

Scheme No.

To THE REGISTRAR OF FRIENDLY SOCIETIES,
28, ABINGDON STREET, LONDON, S.W.

COMPLAINT is hereby made by or on behalf of the Workmen of (the Employer under the above-mentioned scheme):—

1°. That the benefits conferred by the scheme no longer conform to the conditions stated in sub-section (1) of section 8 of the above-mentioned Act in the following respects:—

Digitized by Google

or,

2°. That the provisions of the scheme are being violated in the following respects:—

or,

3°. That the scheme is not being fairly administered in the following respects:—

or,

4°. That the following reasons exist for revoking the certificate to the scheme:—

You are requested to examine into this complaint, and if satisfied that good cause exists for it, to revoke the certificate to the scheme unless the cause of complaint is removed.

The undersigned have been authorised in the following manner to make the complaint on behalf of themselves and the other workmen of the said employer:—

} Workmen.

Date , 19 .

Digitized by Google

APPENDIX E

Regulations, Dated June 21, 1907, made by the Secretary of State and the Treasury as to the duties and fees of Certifying and other Surgeons, and as to references to, and remuneration and expenses of, Medical Referees, in England and Wales, under section 8 of the Act.

I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, and We, the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers respectively conferred on us by the Workmen's Compensation Act, 1906, section 8, sub-sections (1) (f), (3) and (5), and section 10, sub-section (1), hereby make the following regulations :—

Definitions.

1. In these regulations—

(i.) "Act" means the Workmen's Compensation Act, 1906.

(ii.) "Workman" means a workman as defined in section 13 of the Act.

(iii.) "Certifying Surgeon" means either the certifying surgeon mentioned in sub-section (1) (i) of section 8 of the Act, or a medical practitioner appointed by the Secretary of State under sub-section (5) of section 8 to have the powers and duties of a certifying surgeon under the said section.

(iv.) "Appointed Surgeon" means a surgeon having power, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, to suspend a workman from employment in the process or processes specified in such rules or regulations.

(v.) "Medical Referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of section 8 of the Act.

Digitized by Google

(vi.) The words "disease to which the Act applies" mean a disease mentioned in the third schedule to the Act or a disease or injury (not being an injury by accident) to which the provisions of section 8 of the Act have been extended by an Order made by the Secretary of State under sub-section (6) of that section.

2. Where a workman applies to a certifying surgeon for a certificate (hereinafter called "a certificate of disablement") that he is suffering from a disease to which the Act applies, and is thereby disabled from earning full wages at the work at which he was employed, the certifying surgeon, on payment of the prescribed fee, and after obtaining the particulars specified in the schedule to these regulations and such further information, if any, respecting the case as in the particular circumstances he may deem necessary, shall either proceed at once, if the application is made by the workman in person, to make a medical examination of the workman, or shall appoint forthwith a time and place for making such examination, and give notice thereof to the workman. Such notice, if given in writing, shall follow, as closely as may be, the form prescribed in the schedule. Form 1. Form 2.

3. After personally examining the workman, the certifying surgeon shall either give the workman a certificate of disablement or shall certify that he is not satisfied that the workman is entitled to such certificate, and shall in either case deliver his certificate to the workman. The certificate given shall be in the form prescribed in the schedule to these regulations. Forms 3 and 5.

4. Where, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, the certifying or appointed surgeon, after having personally examined a workman, suspends him from his usual employment on account of his having contracted any disease to which the Act applies, or where in the case of a workman applying to be suspended on account of his having contracted any such disease, the surgeon as aforesaid, after having personally examined such workman, refuses to order his suspension, he shall, on the application either of the employer or of the workman, and on payment of the prescribed fee, certify such suspension or refusal to suspend in accordance with the form prescribed in the schedule to these regulations, and shall deliver such certificate to the applicant. Forms 6 and 8.

5. Where a certificate of disablement is given or a workman is suspended, and the case is one in which, under the provisions of sub-section (2) of section 8 of the Act as extended by any Order of the Secretary of State made under sub-section (6) of the said section, the disease contracted by the workman will be deemed, unless the employer proves, or the certifying surgeon certifies, to the contrary, to have been due to the nature of the employment in the process in

Digitized by Google

which at or immediately before the date of the disablement or suspension the workman was employed, the certifying surgeon, if he is of opinion that the disease contracted by the workman was not due to the nature of such employment, shall certify accordingly. Such certificate shall, where possible, be given simultaneously with, and included in, the certificate of disablement or the certificate (if any) of suspension, but may also be given separately on application by the employer and on payment of the prescribed fee; and in either case shall follow the form prescribed in the schedule to these regulations.

See Forms 4 and 7.

For the purposes of this regulation an appointed surgeon shall have the same powers and duties as a certifying surgeon.

6. A copy of any certificate given by a certifying or appointed surgeon under the foregoing regulations shall, together with any other documents relating to the case, be retained and kept by the surgeon; and copies of any such certificate shall, on payment of the prescribed fee, be supplied by the surgeon to the employer and the workman.

7. The fees which the certifying and appointed surgeons shall be entitled to charge in respect of duties performed under section 8 of the Act shall be as follows:—

Fees payable by the Workman.

(i.) For any certificate given under regulation 8—

(*a*) in cases where the medical examination of the workman is made by the surgeon in the performance of his duties under the Factory and Workshop Act, 1901, a fee of 1s.;

(*b*) in all other cases, a fee of 5s., and where the workman is unable to present himself for examination at the residence of, or other nearer place fixed by, the certifying surgeon, for every mile or portion thereof which the certifying surgeon is required to travel therefrom for the purpose of examining the workman, an additional fee of 1s.

(ii.) For any certificate of suspension or refusal to suspend, under regulation 4, when the medical examination of the workman is made in pursuance of any special rules or regulations under the Factory and Workshop Act, 1901, a fee of 1s.

(iii.) For a copy of any certificate obtained under regulation 6, a fee of 1s.

Fees payable by the Employer.

(iv.) For any certificate of suspension or refusal to suspend, obtained by the employer under regulation 4, a fee of 1s.

Digitized by Google

(v.) Where the employer applies under regulation 5 for a certificate that the disease contracted is not due to the nature of the employment, in respect of every such application (to include the certificate, if given), a fee of 2s. 6d.

(vi.) For a copy of any certificate obtained under regulation 6, a fee of 1s.

References to Medical Referees.

8. Where an employer or workman is aggrieved by the action of a certifying or appointed surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman, he may—

(*a*) if he is an employer, within seven days of the receipt of the notice of disablement or suspension required to be given under the Act, or, in a case of disablement, if the notice is not accompanied by the certificate of the surgeon, or a copy thereof, and the employer forthwith requires the workman to furnish him with a copy, within seven days of the receipt of such copy, or

(*b*) if he is a workman, within seven days of the date on which the surgeon has refused to give him a certificate of disablement or suspension,

apply to the registrar of the county court for the district in which the workman was employed at the time of his examination by the surgeon, for the matter to be referred to a medical referee; provided that it shall be within the discretion of the registrar, on good cause shown, to extend in any case by not more than seven days the period within which an application is required to be made.

9.—(*a*) Any application under the foregoing regulation shall be made in writing, and shall state the grounds on which the reference is asked for, in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be. Forms 9 and 10.

(*b*) The application shall be accompanied by the certificate or a copy of the certificate obtained from the surgeon by whose action the applicant is aggrieved, and by any available report or reports of any medical practitioner by whom the workman has been examined; and if the applicant is an employer, by the notice of disablement or suspension served on him by the workman, and by an undertaking to pay any reasonable travelling expenses incurred by the workman in attending for examination by the medical referee.

(*c*) The applicant shall also file with the registrar such copies of the application and other documents as aforesaid as may be necessary for the use of the medical referee and of the employer or workman, as the case may be, hereinafter referred to as the respondent, who together with the applicant is directly interested in the application.

Digitized by Google

(*d*) In the event of any dispute as to the amount of the travelling expenses payable to the workman by the employer, the matter may be referred to the registrar, whose decision shall be final.

10. It shall be the duty of the registrar on receiving an application to satisfy himself that it is duly made in accordance with the foregoing regulations, and if it is not, to return it for amendment. If and when the application is in accordance with the regulations, he shall refer the matter forthwith to a medical referee, and shall forward to such medical referee by registered post one of the copies of the application and the other documents filed therewith, with an order of reference according to the form prescribed in the schedule.

Form 11.

Form 12.

11. The registrar shall also make an order directing the workman to submit himself for examination by the medical referee. Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel, shall so state in the order of reference; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

12. The registrar shall deliver or send by registered post to both parties a copy of the order of reference, and shall also send to the respondent copies of the other documents forwarded to the medical referee, and shall send to the workman a copy of the order directing him to submit himself for examination.

13. In the case of a reference under these regulations, the medical referee shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and if the circuit has been sub-divided and medical referees have been appointed for the sub-divisions, shall be one appointed for the sub-division comprising the aforesaid district. Provided that if any medical referee is or has been specially appointed by the Secretary of State, either for the circuit or otherwise, for the purpose of deciding on any specified case or class of cases in which a reference may be made under these regulations, the reference in any such case shall be made to the medical referee so appointed. Provided also that if the surgeon by whose action the applicant is aggrieved, has been appointed a medical referee, the reference shall not be made to him, but to such other medical referee as may be authorised to act.

14. The medical referee shall, on receipt of an order of reference duly signed by the registrar of a county court, together with copies of the documents required to be sent therewith, fix a time and a place for a personal examination of the workman, and shall send notice to the employer and workman accordingly. It shall be the duty of the workman, and, if the employer is the applicant, of the employer or a

Digitized by Google

person duly authorised by him, to attend at the time and place fixed by the medical referee, and in the event of failure on the part of the workman or employer or both to appear as required by this regulation, the medical referee shall decide on the matter referred to him forthwith upon such information as shall be available and with or without a personal examination. Provided that where the absence of the employer or his representative or of the workman is shown to the satisfaction of the medical referee to be unavoidable, or where the medical referee considers it necessary to apply for expert assistance as hereinafter provided, it shall be open to him to adjourn the inquiry on the reference and to resume it at such time and place as he may fix, after giving due notice to all parties concerned. Forms 13 and 14.

15. Except as otherwise provided by regulation 14, the medical referee shall, before deciding on the matter referred to him, make a personal examination of the workman, and shall consider any statements made or submitted by either party.

16. The medical referee shall, in the form prescribed in the schedule to these regulations (subject to such additions and modifications as the circumstances of the case may require) notify in writing his decision to the registrar of the county court, to the applicant and to the respondent. Form 15.

17. The medical referee shall send to the Home Office at the end of each quarter a statement (accompanied by any vouchers necessary), in the form prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations. Form 16.

18. The following fees and allowances are authorised to be paid to medical referees under these regulations:—

(i.) For deciding the matter referred to him in any reference and for all duties performed in connection therewith, 2 guineas.

(ii.) Where in order to examine the workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fee, 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.

(iii.) In cases involving special difficulty the medical referee may apply for special expert assistance which may be granted by the Secretary of State if he thinks fit, on such terms as to remuneration or otherwise, as he may with the sanction of the Treasury determine.

Digitized by Google

19. In cases where a claim is made under regulation 18 (ii.) in respect of an examination of a workman, the medical referee, in submitting his quarterly statement under regulation 17, shall certify the distance of the place where the examination was made from his residence or other prescribed centre.

Form 17.

20. The registrar of a county court shall keep a record, in the form prescribed in the schedule, of all references made by him under these regulations, and shall send the same to the Secretary of State at the end of each quarter.

21. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

H. J. Gladstone,
One of His Majesty's Principal Secretaries of State.

Joseph A. Pease,
Cecil Norton,
Two of the Lords Commissioners of His Majesty's Treasury,

21st June, 1907.

Schedule.

(Form 1.)

Particulars to be obtained by Certifying Surgeon upon application by Workman for Certificate of Disablement.

1. Name and address of workman
2. Disease in respect of which certificate is applied for ...
3. Symptoms complained of ...
4. Employment to the nature of which disease is attributed
5. Name and place of business of employer who last employed workman in such employment ... ...
6. (*Where application is not made by workman in person*) whether workman is able to travel for purposes of examination ... ...

Digitized by Google

(FORM 2.)

Notice to Workman of time and place appointed for his Examination by Surgeon.

Workmen's Compensation Act, 1906.

I hereby give you notice, with reference to your application for a certificate of disablement under section 8, sub-section (1), of the above-named Act, that I propose to examine you at on the day of at o'clock, and that you are required to submit yourself for examination accordingly.

To (*the Workman.*)

(Signed)

(FORM 3.)

Certificate of Disablement.

Workmen's Compensation Act, 1906.

I, (*a*) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or* as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the Act), hereby certify that having personally examined (*b*) on the day of I am satisfied that (*c*) is suffering from (*d*) being one of the diseases to which the Workmen's Compensation Act applies, and is thereby disabled from earning full wages at the work at which (*c*) has been employed; and I* certify that the disablement commenced on the day of

1. Full name and address of workman ... ...
2. Process in which workman states he was employed at or immediately before the date of disablement ... ...
3. Name and place of business of employer stated by workman to have last employed him in process above-mentioned ...
4. Leading symptoms of disease

Dated this day of

(Signed)

(*a*) strike out portion of description inapplicable.

(*b*) name of workman.

(*c*) "he" or "she."

(*d*) name disease according to the terms in which it is described in the third schedule to the Act or Order of the Secretary of State adding it to the schedule.

* If the surgeon is unable to certify a date on which the disablement commenced, he should strike out this part of the certificate. In that case the disablement will be deemed to have commenced on the date on which this certificate is given. *See* section 8 (4) of the Act.

Digitized by Google

(FORM 4.)

Certificate (supplementary to a Certificate of Disablement) to be given by Certifying Surgeon in circumstances mentioned in Regulation 5.

1. *When the certificate is included in the certificate of disablement, it should run as follows :—*

But whereas the said workman appears to have been employed at or immediately before the date of disablement in (*a*) being a process (*b*) the second column of the third schedule to the Act, and the disease contracted by him, viz. (*c*) is a disease which (*d*) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Date this day of .

(Signed) .

(*a*) name process.
(*b*) "mentioned in" or "added by an Order of the Secretary of State to."
(*c*) name disease.
(*d*) "in the first column of that schedule" or "under the provisions of the said Order."

---

2. *When the certificate is given separately on a subsequent application of the employer, it should be in the following form :—*

Workmen's Compensation Act, 1906.

Whereas I, (*e*) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or* as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon, for the purposes of section 8 of the above-named Act), on the day of certified that (*f*) was suffering from (*g*) being a disease to which the Workmen's Compensation Act applies, and was thereby disabled from earning full wages at the work at which he was employed; and whereas the said (*f*) appears to have been employed at or immediately before the date of disablement in (*h*) being a process (*i*) the second column of the third schedule to the Act, and the disease above-named is a disease which (*k*) is set opposite the above-mentioned process, I hereby certify that, in my opinion, the said disease was not due to the nature of such employment.

Dated this day of .

(Signed) .

(*e*) strike out portion of description inapplicable.
(*f*) name of workman.
(*g*) name disease.
(*h*) name process.
(*i*) "mentioned in" or "added by an Order of the Secretary of State to."
(*k*) "in the first column of that schedule" or "under the provisions of the said Order."

Digitized by Google

(FORM 5.)

Certificate of Certifying Surgeon refusing to give Certificate of Disablement.

Workmen's Compensation Act, 1906.

I, (*a*) as certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of (*or* as a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the above Act), hereby certify that having personally examined (*b*) who has applied for a Certificate of Disablement in respect of (*c*) being a disease to which the Workmen's Compensation Act applies, I am not satisfied that (*d*) is suffering from the said disease so as to be disabled from earning full wages at the work at which (*d*) has been employed.

(*a*) strike out portion of description inapplicable.
(*b*) name workman.
(*c*) describe disease.
(*d*) "he" or "she."

1. Full name and address of workman ... ...
2. Employment to nature of which disease complained of was attributed ... ...
3. Name and place of business of employer stated by workman to have last employed him in such employment ...

Dated this day of

(Signed)

(FORM 6.)

Certificate of Suspension by Certifying or Appointed Surgeon.

Workmen's Compensation Act, 1906.

I the (*a*) surgeon for (*b*) hereby certify that after personally examining (*c*) , I have on the day of in pursuance of the (*d*) made under the Factory and Workshop Act, 1901, suspended the said (*c*) from (*e*) usual employment on account of (*e*) having contracted (*f*) being a disease to which the Workmen's Compensation Act applies.

(*a*) "certifying" or "appointed."
(*b*) name works at which workman is employed.
(*c*) name workman.
(*d*) name the special rules or regulations governing the employment.
(*e*) "his" or "her."
(*f*) describe disease.

Digitized by Google

1. Full name and address of workman ... ...
2. Employment from which workman is suspended ...
3. Name and place of business of employer ... ...
4. Leading symptoms of disease...

Dated this day of .

(Signed) .

(FORM 7.)

Certificate to be given by Surgeon in cases of suspension in circumstances mentioned in Regulation 5.

1. *When the certificate is included in a certificate of suspension, it should run as follows :—*

But whereas the said workman appears to have been employed at or immediately before the date of suspension in (*a*) being a process (*b*) the second column of the third schedule to the Act, and the disease contracted by him, viz. (*c*) is a disease which (*d*) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease is not due to the nature of such employment.

Dated this day of .

(Signed) .

(*a*) name process.
(*b*) "mentioned in" or "added by an Order of the Secretary of State to."
(*c*) name disease.
(*d*) "in the first column of that schedule" or "under the provisions of the said Order."

---

2. *When the certificate is given separately on an application by the employer, it should be in the following form :—*

Workmen's Compensation Act, 1906.

Whereas I, the (*a*) surgeon for (*b*) on the day of in pursuance of the (*c*) made under the Factory and Workshop Act, 1901, suspended (*d*) from (*e*) usual employment on account of (*e*) having contracted (*f*) being a disease to which the Workmen's Compensation Act applies, and whereas the said (*d*) appears to have been employed at

(*a*) "certifying" or "appointed."
(*b*) name works at which workman was employed.
(*c*) name special rules or regulations governing the employment.
(*d*) name of workman.
(*e*) "his" or "her."
(*f*) describe disease.

Digitized by Google

or immediately before the date of suspension in (*g*) being a process (*h*) the second column of the third schedule to the Act, and the disease above-named is a disease which (*i*) is set opposite the above-mentioned process, I hereby certify that in my opinion the said disease was not due to the nature of such employment.

Dated this day of .

(Signed) .

(*g*) name process.
(*h*) "mentioned in" or "added by an Order of the Secretary of State to."
(*i*) "in the first column of that schedule" or "under the provisions of the said Order."

(FORM 8.)

Certificate by Certifying or Appointed Surgeon of Refusal to Suspend.

Workmen's Compensation Act, 1906.

I, the (*a*) surgeon for (*b*) hereby certify that (*c*) having applied to me to be suspended from his usual employment in pursuance of (*d*) made under the Factory and Workshop Act, 1901, on account of (*e*) having contracted (*f*) being a disease to which the Workmen's Compensation Act applies, I have after personally examining the said (*c*) refused to suspend (*g*) .

1. Full name and address of workman ... ...
2. Name and place of business of employer ... ...
3. Grounds for refusal to suspend

Dated this day of .

(Signed) .

(*a*) "certifying" or "appointed."
(*b*) name works at which workman is employed.
(*c*) name workman.
(*d*) name the code of special rules or regulations governing the employment.
(*e*) "his" or "her."
(*f*) describe disease.
(*g*) "him" or "her."

(FORM 9.)

Application by Employer for Reference to Medical Referee.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of a Certificate of Disablement (*or* Suspension) granted in the case of (*name and address of workman*) in pursuance of the provisions of section 8 of the above-mentioned Act and the Regulations made thereunder by the Secretary of State.

Digitized by Google

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the Act and to the above-mentioned regulations, is hereby made on behalf of (*name and place of business of applicant*) who states :—

1. That on the day of notice of disablement (*or* suspension) was given to the applicant by the above-mentioned under the provisions of the said Act.

2. That the said notice was consequent on a certificate of disablement given (*or* order of suspension made), on the day of , in pursuance of the said Act and regulations, by Mr. residing at (*full address*), the certifying surgeon under the Factory and Workshop Act, 1901, for the district of (*or* a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon under section 8 of the said Act, *or* a surgeon appointed in pursuance of (*describe special rules or regulations under the Factory Act*) at (*name of factory or other place of employment*)).

3. That the applicant is aggrieved by the action of the above-mentioned Mr. in giving the said certificate (*or* in making the said order of suspension) and claims that the said had not contracted the disease in respect of which the said certificate was given (*or* in respect of which the said order was made) (*or, in the case of a certificate of disablement*, was not suffering from the disease therein specified so as to be disabled from earning full wages at the work at which he was employed), in support of which claim he mentions the following circumstances :—(*)

* State grounds for claim, *e.g.*, report of any doctor employed by applicant.

And the applicant hereby undertakes, if the matter is referred to a medical referee, to repay to the said (*workman*) any reasonable travelling expenses he may incur in attending for examination by such referee.

Two copies of this application are annexed hereto, together with a copy of the notice and certificate of disablement (*or* suspension). (The above-mentioned report of the medical practitioner employed by me, and two copies thereof, are also annexed.)

Dated this day of .

(Signed)

Applicant.

To the Registrar.

Digitized by Google

(FORM 10.)

Application by Workman for Reference to Medical Referee.

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of a Refusal of a certifying (*or* appointed) Surgeon to give a Certificate of Disablement to (*or* to suspend) (*name and address of applicant*) in pursuance of the provisions of section 8 of the above-mentioned Act and the regulations made thereunder by the Secretary of State.

Application for a reference in the above-mentioned matter to a medical referee, pursuant to section 8, sub-section (1) (f), of the said Act and to the above-mentioned regulations, is hereby made on behalf of the said who states:—

1. That on the day of applicant applied to Mr. residing at (*full address*) the certifying surgeon under the Factory and Workshop Act, 1901, for the district of (*or* a medical practitioner appointed by the Secretary of State to have the powers and duties of a certifying surgeon for the purposes of section 8 of the said Act, *or* a surgeon appointed in pursuance of (*describe special rules or regulations under Factory Act*) at (*name of factory, or other place of employment*), for a certificate of disablement (*or* to be suspended) in respect of a disease to which the provisions of section 8 of the Workmen's Compensation Act apply.

2. That the said Mr. refused to give the applicant a certificate of disablement (*or* to suspend the applicant) and certified to such refusal by a certificate, dated the day of , which is annexed to this application.

3. That the applicant is aggrieved by the action of the said Mr. in refusing to give him a certificate of disablement (*or* to suspend him) and claims that he was suffering from the said disease, and was thereby disabled from earning full wages at the work at which he was employed (*or in the case of a refusal to suspend*, that he had contracted the said disease and was thereby entitled, in accordance with the special rules (*or* regulations) made under the Factory and Workshop Act, 1901, for the process in which he was employed, to be suspended), in support of which claim he mentions the following circumstances:—(*)

4. That the employer on whom the applicant, if the matter is referred to a medical referee and decided in favour of the applicant,

* State grounds of claim, *e.g.*, report, if any, of doctor employed by applicant.

Digitized by Google

would serve the statutory notice of disablement (*or* suspension) is (*name and place of business of employer*).

Two copies of this application and the certificate of the surgeon (together with the above-mentioned report of the medical practitioner employed by applicant and two copies thereof) are annexed hereto.

Dated this day of .

(Signed) .

Applicant.

To the Registrar.

(FORM 11.)

Order of Reference to Medical Referee.

In the County Court of holden at .

(*Heading as in application.*)

On the application of (a copy of which is hereto annexed), I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the said application.

Copies of the notice and certificate of disablement (*or* suspension), (and of a report of a medical practitioner by whom the workman referred to in the application has been examined), are hereto annexed.

Or, if the workman is the applicant,

A copy of the certificate of the surgeon referred to in the application (together with a copy of a report of a medical practitioner by whom applicant has been examined), is hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*Or* the said does not appear to be in a fit condition to travel for the purpose of being examined.]

Dated this day of .

Registrar.

Digitized by Google

(FORM 12.)

Order on Workman to submit himself for Examination by Medical Referee.

In the County Court of holden at .

(*Heading as in Application.*)

To A.B. , of (*address and description*).

TAKE NOTICE, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to decide on the matter arising on the above application.

You are hereby required to submit yourself for examination by the referee [*add, where workman is in a fit condition to travel,* and to attend for that purpose at such time and place as may be fixed by him].

Dated this day of .

Registrar.

(FORM 13.)

Notice by Medical Referee to Workman.

Workmen's Compensation Act, 1906.

I hereby give you notice that I have received from the Registrar of the County Court at , an order of reference appointing me to decide on your appeal against the action of Mr. (*name of surgeon*) in refusing to give you a certificate of disablement (*or* to suspend you).

Or, if the employer is the appellant,
on the appeal made by (*name of employer*) against the action of Mr. (*name of surgeon*) in giving you a certificate of disablement (*or* in suspending you);

And that you are required to attend (*or, if the workman has been ascertained not to be in a fit condition to travel,* to submit yourself) for examination at on the day of at o'clock.

Any statement made or submitted by you shall be considered.

(Signed) .

Medical Referee.

To

Digitized by Google

(FORM 14.)

Notice by Medical Referee to Employer.

Workmen's Compensation Act, 1906.

I hereby give you notice that I have received from the Registrar of the County Court at , an order of reference appointing me to decide on your appeal against the action of Mr. (*name of surgeon*) in giving a certificate of disablement to (*or* in suspending) (*name of workman*).

Or, if the workman is the appellant,

on the appeal made by (*name of workman*) against the action of Mr. (*name of surgeon*) in refusing to give him a certificate of disablement (*or* to suspend him);

And that I propose to examine (*name of workman*) at on the day of at o'clock.

Any statement made or submitted by you shall be considered.

Add, if the employer is the appellant,

You, or some person duly authorised by you, are hereby required to attend at the above time and place.

Dated this day of .

(Signed)

Medical Referee.

To

(FORM 15.)

Decision of Medical Referee.

(*Heading as in Application.*)

I hereby give you notice that having duly inquired into the above-mentioned matter in accordance with the regulations of the Secretary of State, I decide as follows :—

I dismiss (*or* allow) the appeal of (*name of employer*) against the certificate of disablement given to (*name of workman*) on the day of

or

I dismiss (*or* allow) the appeal of (*name of employer*) against the suspension of (*name of workman*) on the day of

or

I dismiss the appeal of (*name of workman*) against the refusal of Mr. (*name of surgeon*) to give him a certificate of disablement in respect of (*name of disease*).

or

Digitized by Google

I allow the appeal of (*name of workman*) against the refusal of Mr. (*name of surgeon*) to give him a certificate of disablement in respect of (*name of disease*), and I fix the day of as the date on which the disablement commenced,

or

I dismiss (*or* allow) the appeal of (*name of workman*) against the refusal of Mr. (*name of surgeon*) to suspend him on the day of

Dated this day of .

(Signed)

Medical Referee.

To (*the Registrar*),
and to (*the Employer*),
and to (*the Workman*).

(FORM 16.)

Medical Referee's Statement of Fees in respect of References under Section 8 of the Workmen's Compensation Act, 1906.

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and Place of Examination.	Date and Terms of Decision.	Amount of Fees under each of the headings in Regulation 18. (i.)	(ii.)	(iii.)
						£ s. d.	£ s. d.	£ s. d.
1.								
2.								
					£			
					Total £	s.	d.	

I hereby certify that I examined the workman on , at , which is distant miles from my residence or prescribed centre.

(Signed)

Medical Referee.

Digitized by Google

(FORM 17.)

Record of References to be kept by Registrar.

For quarter ended.

Number of Reference.	Names of Parties.	Action of Surgeon by which applicant is aggrieved.	Name of Surgeon.	Nature of Disease.	Date on which reference made.	Whether workman directed to attend on Medical Referee or not.	Name of Medical Referee.

Digitized by Google

APPENDIX F

Regulations of the Secretary of State, dated June 28, 1907, as to examinations of a Workman by a Medical Practitioner provided and paid by the Employer under the provisions of the First Schedule to the Workmen's Compensation Act, 1906.

In pursuance of the powers vested in me by paragraph (15) of the First Schedule to the Workmen's Compensation Act, 1906, I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, do hereby make the following regulations :—

1. Where a workman has given notice of an accident or is in receipt of weekly payments under the Act, he shall not be required to submit himself, against his will, for examination by a medical practitioner provided by the employer except at reasonable hours.

2. A workman in receipt of weekly payments shall not be required, after a period of one month has elapsed from the date on which the first payment of compensation was made, or if the first payment is made in obedience to the award of a committee or arbitrator, from the date of the award, to submit himself, against his will, for examination by a medical practitioner provided by the employer except at the following intervals:—Once a week during the second, and once a month during the third, fourth, fifth, and sixth months, after the date of the first payment or the award, as the case may be, and thereafter once in every two months.

Provided that where after the second month an application has been made to the county (in Scotland, the sheriff) court or to a committee for a review of the weekly payment, the workman may be required, pending and for the purposes of the settlement of the application, to submit himself to one additional examination.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
28th June, 1907.

Digitized by Google

APPENDIX G

REGULATIONS, DATED JUNE 24, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND REMUNERATION OF MEDICAL REFEREES IN ENGLAND AND WALES UNDER THE PROVISIONS OF THE FIRST AND SECOND SCHEDULES TO THE WORKMEN'S COMPENSATION ACT, 1906.

I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, and We, the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers respectively conferred on us by the Workmen's Compensation Act, 1906, hereby make the following regulations:—

Part I.—Definitions and General Regulations.

1. In these regulations—

(i.) "Medical Referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of the Workmen's Compensation Act, 1906.

(ii.) "Reference" means—

(*a*) in Regulations in Part II., the appointment of a medical referee by the registrar of a county court, to give a certificate, in accordance with the provisions of paragraph (15) of the first schedule to the Workmen's Compensation Act, 1906, as to the condition of the workman and his fitness for employment or as to whether or to what extent the incapacity of the workman is due to the accident.

(*b*) in regulations in Part III., the appointment of a medical referee by the registrar of a county court to give a certificate, in accordance with the provisions of paragraph (18) of the first schedule to the Workmen's Compensation Act, 1906, as to whether the incapacity resulting from the injury is likely to be of a permanent nature.

Digitized by Google

(*c*) in regulations in Part V., the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1906.

(iii.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Workmen's Compensation Act, 1906, in the case of the employer and workmen.

(iv.) "Agreed Arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1906, is to be settled by arbitration.

(v). "Appointed Arbitrator" means a single arbitrator appointed by the judge.

(vi.) "Judge" means County Court Judge.

(vii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district prescribed by rules of court, subject to any transfer made under those rules.

2. In the case of any reference under these regulations, the medical referee, in the absence of special circumstances, shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and shall, if the circuit has been sub-divided, and medical referees have been appointed for the sub-divisions, be one appointed for the sub-division which comprises the aforesaid district. Provided that, where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee and be accompanied by the previous report or certificate, or copy thereof, of the medical referee.

3. The medical referee shall not accept any reference under these regulations unless signed or countersigned by the registrar of a county court and sealed with the seal of the county court.

4. The medical referee shall send to the Home Office at the end of each quarter statements, in the forms prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations. Forms I, J, K, and L.

5. In cases where a claim is made under the regulations in respect of travelling expenses, the medical referee, in submitting his quarterly statements under regulation 4, shall certify the distance of

Digitized by Google

the place to which he was required to travel from his residence or other prescribed centre.

6. In cases involving special difficulty the medical referee may apply to the Secretary of State for special expert assistance which may be granted by the Secretary of State, if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.

Form M.

7. The registrar of every county court shall keep a record, in the form prescribed in the schedule, of all references made under these regulations, and of all cases in which a medical referee is summoned to sit as assessor, and shall send a copy thereof to the Secretary of State at the end of each quarter.

8. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

Part II.—Regulations as to References under Schedule I., paragraph (15).

9. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to both the parties signing the application on which the reference is made.

Forms A and B.

10. Before giving the certificate required by the reference, the medical referee shall personally examine the workman and shall consider any statements that may be made or submitted by either party.

Form C.

11. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations.

12. The medical referee shall forward his certificate to the registrar from whom he received the reference.

13. The following shall be the scale of fees to be paid to medical referees in respect of references under this part of the regulations:—

(i.) For a first reference (to include all the duties performed in connection therewith) ... 2 guineas.

(ii.) For a second or subsequent reference to the same medical referee in the same case ... 1 guinea.

(iii.) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.

Digitized by Google

Part III.—Regulations as to References under Schedule I., paragraph (18).

14. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to the workman. Form D.

15. Before giving the certificate required by the reference the medical referee shall make a personal examination of the workman.

16. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations. Form E.

17. The medical referee shall forward his certificate to the registrar from whom he received the reference.

18. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connexion therewith) under this part of these regulations shall be one guinea.

Part IV.—Regulation as to Remuneration of Medical Referee for sitting as Assessor under Schedule II., paragraph (5).

19. Where a medical referee attends on the summons of the judge for the purpose of sitting with the judge as an assessor, as provided for in paragraph (5) of the second schedule to the Workmen's Compensation Act, 1906, he shall be entitled for such attendance (to include his services as assessor) to a fee of 8 guineas, and where in order so to attend on the judge, he is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fee, to 5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter to 1s. for each mile distant therefrom.

Part V.—Regulations as to References under Schedule II., paragraph (15).

Conditions of Reference.

20. Before making any reference, the committee, arbitrator or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

21. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the

Digitized by Google

question arising in the arbitration to which such matter seems to be material. Such reference shall be in accordance with the form pre-
Form F. scribed in the schedule to these regulations, or as near thereto as may be.

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

22. On making the reference to the medical referee, the committee,
Form G. arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, they shall by the same order direct him to attend at such time and place as the referee may fix.

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

23. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the county court in which the arbitration is pending.

24. A committee or an agreed arbitrator, making a reference, shall, without naming a medical referee, address the reference in general terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906," and shall forward it to the registrar of the county court of the district in which the case arises.

Duties of Registrar.

25. (1) In the case of a reference by a committee or agreed arbitrator, the registrar on receiving the reference—

(*a*) Shall see that the reference is in accordance with these regulations, and if it is not, shall return it for amendment;

(*b*) Shall insert the name of the medical referee proper to be appointed;

(*c*) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

Digitized by Google

(2) In the case of a reference by a judge or an appointed arbitrator, the registrar of the court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

26. The registrar, on receiving a report from a medical referee under Regulation 28, shall forthwith file a copy at the court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator or judge shall direct that the parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

Report of Medical Referee.

27. The medical referee shall, on receipt of a reference duly signed and sealed, appoint a time and a place for the examination of the workman, and shall send him notice accordingly. Form H.

28. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

29. The committee, arbitrator or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for a further statement on any matter not covered by the original reference.

Fees.

30. The following shall be the scale of fees to be paid to the medical referees in respect of references under this part of the regulations:—

(i.) For a first reference, to include examination of the injured workman and written report	2 guineas.
(ii.) For a further statement under Regulation 29 on any matter not covered by the original reference	1 guinea.
(iii.) For a second or subsequent reference to the same referee in a further arbitration on the same case, to include examination, if necessary, and written report	1 guinea.

Digitized by Google

(iv.) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5s. for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1s. for each mile distant therefrom.

H. J. Gladstone,
One of His Majesty's Principal Secretaries of State.

Joseph A. Pease,
J. H. Whitley,
Two of the Lords Commissioners of His Majesty's Treasury.

24th June, 1907.

Schedule.

(FORM A.)

Notice by Medical Referee to Employer or Solicitor signing the application on employer's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me by the Registrar of the County Court of holden at , under Schedule I., paragraph (15), of the above-named Act, in the case of (*name and address of workman*) I propose to examine the said at on the day of at o'clock.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the employer), will be considered.

Dated this day of .

(Signed)

Medical Referee.

Digitized by Google

(FORM B.)

Notice by Medical Referee to Workman or Solicitor signing the application on Workman's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me in your case (*or, if notice is addressed to the solicitor,* in the case of *(name and address of workman)*), by the Registrar of the County Court of holden at , under Schedule I., paragraph (15), of the above-named Act, I propose to examine you (*or* the said) at on the day of at o'clock.

And you are required to submit yourself (*or* the said is required to submit himself) for examination accordingly.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor,* by the workman) will be considered.

Dated this day of .

(Signed)

Medical Referee.

(FORM C.)

Certificate of Medical Referee as to condition of Workman and fitness for employment, or as to whether or to what extent incapacity of workman is due to the accident (Schedule I. (15)).

Workmen's Compensation Act, 1906.

In accordance with the Reference made to me by the Registrar of the County Court of holden at upon the application of *(names and addresses of parties)* I have on the day of examined the said *(name of workman)* and I hereby certify as follows:—

1. The said is *

and his condition is such that he is †

*Describe state of health.

†State whether workman is fit for his ordinary or other work, specifying where necessary the kind of work, or whether he is unfit for work of any kind.

Digitized by Google

2. The incapacity of the said is ‡

‡State whether or to what extent the incapacity is due to the accident (*or, in cases coming within section 8 of the Act*, to the disease).

NOTE.—*Either paragraph 1 or paragraph 2 to be filled up, or both to be filled up, according to the terms of the Reference.*

Dated this day of .

(Signed)

Medical Referee.

(FORM D.)

Notice by Medical Referee to Workman (Schedule I. (18)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me in your case by the Registrar of the County Court of holden at under Schedule I., paragraph (18), of the above-named Act, I propose to examine you at on the day of at o'clock, and you are required to submit yourself for examination accordingly.

Dated this day of .

(Signed)

Medical Referee.

(FORM E.)

Certificate of Medical Referee (Schedule I. (18)).

Workmen's Compensation Act, 1906.

In accordance with the Reference made to me by the Registrar of the County Court of holden at under Schedule I., paragraph (18), of the above-named Act, I have on the day of examined

Digitized by Google

of (*name and address of workman*) and I hereby certify that his incapacity is [*or* is not] likely to be of a permanent nature.

Dated this day of .

(Signed)

Medical Referee.

(FORM F.)

Reference to a Medical Referee (*Schedule II.* (15)).

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an Arbitration between—

A.B.

Address

Description Applicant,

and

C.D.

Address

Description Respondent.

As the case may be

(*a*) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act, between *A.B.* and *C.D.*;

(*b*) I, , an arbitrator agreed upon by *A.B.* and *C.D.* to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1906;

(*c*) I, , Judge of County Courts;

(*d*) I, , arbitrator appointed by a Judge of County Courts,

having heard the evidence tendered by both parties, hereby certify that in our (*or* my) opinion the medical evidence given before us (*or* me) is conflicting (*or* insufficient) on a matter which seems to us (*or* me) to be material to a question arising in the above-mentioned arbitration, and that it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was (*or* is alleged to have been) caused to *

*Insert name of injured workman.

Digitized by Google

by accident arising out of and in the course of his employment, under the following circumstances:—

†Here state the facts of the accident as ascertained from the evidence.

†

Or, in a case of industrial disease to which the Act applies—

(A) On the day of the said * was, under section 8 of the above-named Act, certified to be disabled by, or suspended from his usual employment on account of his having contracted a disease to which the said section applies, namely,‡

‡Name disease.

(B) The matter on which we are (*or* I am) satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following question arising in the arbitration, viz.:—

§The name must, if the reference is made by a committee or agreed arbitrator, be left in blank to be inserted by the Registrar.

We (*or* I) therefore appoint §
one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said
on the matter specified above, and to report to us (*or* me).

A statement of the medical evidence given before us (*or* me) is appended.

We are (*or* I am) satisfied that the said
who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee; *or* does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to—

The Registrar,
County Court Office,

on or before the day of

Dated this day of .

(Signed)
*
or On behalf of the Committee

Chairman / *Secretary* } *of Committee.*

Signature of Registrar and Seal of Court.

*For signature of judge or arbitrator.

A previous reference was made to a medical referee in this case on the , 19 , and a copy of the report then given is attached.

Digitized by Google

(FORM G.)

Order on injured Workman to submit himself for examination by Medical Referee.

(*Title as in Reference.*)

To *Address.*

of *Description.*

TAKE NOTICE—

That the Committee (*or* arbitrator, *or* judge) have (*or* has) appointed one of the medical referees under the Workmen's Compensation Act, 1906, to examine you for the purposes of the above-mentioned arbitration, and to report to them (*or* him).

You are hereby required to submit yourself for examination by such referee,† and to attend for that purpose at such time and place as may be fixed by him.

† Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

Dated this day of .

(*To be signed in the same manner as Reference.*)

(FORM H.)

Notice by Medical Referee to injured Workman (Schedule II. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that I have been appointed to examine and report on your case under Schedule II., paragraph (15), of the above-named Act, and that I propose to make such examination at on the day of at o'clock.

(Signed)

Medical Referee.

Digitized by Google

(FORM I.)

Medical Referee's Statement of Fees in respect of References under Schedule I. (15).

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and Place of Examination.	Date on which Certificate sent to Registrar.	Whether Certificate as to condition of workman or as to cause of incapacity or both.	Amount of the fees under each of the headings in Regulation 13.			Payments under Regulation 6.
							(i.)	(ii.)	(iii.)	
							£ s. d.	£ s. d.	£ s. d.	£ s. d.
						£				
									Total ...	£ s. d.

Endorsement to be made on back of statement.

I hereby certify that I examined the above-mentioned (*name of workman*) on at which is distant miles from my residence or prescribed centre.

(Signed)

(FORM J.)

Medical Referee's Statement of Fees in respect of References under Schedule I. (18).

Number.	Name of Workman.	Date on which Reference received.	Registrar from whom received.	Date of examination.	Date on which Certificate sent to Registrar.	Whether incapacity certified to be permanent or not.	Fees under Regulation 18.	Payments under Regulation 6.
							£ s. d.	£ s. d.
							Total ...	£ s. d.

Digitized by Google

(FORM K.)

Medical Referee's Statement of Fees for attendances as Assessor under Schedule II. (5).

Number.	Date on which Summons received.	Registrar from whom Summons received.	Date and Place of Attendance.	Fees under Regulation 19.	
				For attendance.	For miles travelled.
				£ s. d.	£ s. d.

(FORM L.)

Medical Referee's Statement of Fees in respect of References under Schedule II. (15).

Number.	Names of Parties	Date on which Reference received.	Registrar from whom received.	Date and place of Examination.	Date on which Report sent.	Amount of Fees under each of the headings in Regulation 30.				Payments under Regulation 6.
						(i.)	(ii.)	(iii.)	(iv.)	
						£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
					£					

Total ... £ s. d.

* I hereby certify that I examined the above-mentioned (*name of workman*) on , at , which is distant miles from my residence or prescribed centre.

(Signed)

* Endorsement to be made on back of statement.

Digitized by Google

(FORM M.)

Record of References, &c., to be kept by Registrar.

County Court Circuit . District . Name of Registrar

For quarter ended .

Number of Reference. (1.)	Names of Parties. (2.)	Workman's Employment. (3.)	Date on which Reference forwarded to Medical Referee. (4.)	Provision in the Act under which Reference is made, and if under Sched. II. (15), by whom made.* (5.)	Whether workman directed to attend on Medical Referee, or not. (6.)	Medical Referee appointed. (7.)	Date and number of previous Reference in same case, if any. (8.)

* Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

NOTE.—In cases where there is no Reference, but the Medical Referee is summoned to sit as assessor, the Registrar should write a note to that effect across columns 4, 5, and 6.

Digitized by Google

APPENDIX H

REGULATIONS, DATED JANUARY 15, 1908, MADE BY THE SECRETARY OF STATE UNDER SECTION 12 OF THE WORKMEN'S COMPENSATION ACT, 1906, AS TO RETURNS TO BE FURNISHED EACH YEAR BY EMPLOYERS IN CERTAIN INDUSTRIES WITH RESPECT TO THE COMPENSATION PAID UNDER THE ACT DURING THE PREVIOUS YEAR.

In pursuance of the powers conferred on me by section 12 of the Workmen's Compensation Act, 1906, I hereby make the following regulations:—

1. The industries to which section 12 of the Act shall apply shall be the industries specified in the first schedule to these regulations.

2. The date on or before which in every year the return required under the said section shall be sent to the Secretary of State shall be the first day of March, commencing with the year 1909.

3. The return shall furnish the particulars set out in the second schedule to these regulations.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
January 15, 1908.

Schedule I.

Mining.

Quarrying.

Working of railways (not being railways laid on public roads) authorised by special Act or by Orders or Certificates made in pursuance of General Acts and having statutory force, including stations and sidings connected with such railways and belonging to the owners thereof.

Any industry being carried on in any factory to which the Factory and Workshop Act, 1901, applies.

Digitized by Google

The business of a harbour, dock, wharf or quay.

Constructional work (includes the construction of railways, tramways, canals, harbours or docks, bridges, tunnels, waterworks, sewers, roads, and other works of engineering, but does not include construction of buildings).

Shipping (excluding sailing-vessels in the sea-fishing service).

Schedule II.

FORM OF RETURN.

WORKMEN'S COMPENSATION ACT, 1906, SECTION 12.

The Employer is required to send to the Home Office on or before the first day of March, 190 , a return showing the following particulars as to the compensation paid by him under the Workmen's Compensation Act, 1906, during the year 190 .

In default of so doing he will be liable to a penalty.

The Employer's attention is specially directed to the following points:—

(1) The figures furnished by the individual employer will not be published, but will be treated as strictly confidential. Only *totals* for industries will be published.

(2) The return should *not* include any particulars with regard to (*a*) compensation paid under a contracting-out scheme certified by the Chief Registrar of Friendly Societies under the Workmen's Compensation Act, or (*b*) damages under the Employers' Liability Act or at Common Law, or (*c*) payments made under section 84 of the Merchant Shipping Act, 1906.

(3) In calculating the figures as to compensation paid, the employer should take into account only the amount actually paid by him (or by an Employers' Association or Mutual Indemnity or other Insurance Company on his behalf) to the worker. In particular he should not take into account either (*a*) costs incurred by him in connection with legal proceedings or otherwise, or (*b*) amounts received by him by way of indemnity from third parties or under sub-section (1) (*c*) (iii.) of section 8 (industrial diseases) of the Act.

Digitized by Google

(4) An employer insured against his liabilities under the Act in a Mutual Indemnity or other Insurance Company, or belonging to an Association of Employers which deals on behalf of its members with claims for compensation, will not be required to make a separate return, provided the Company in which he is insured, or the Association to which he belongs, is under an arrangement with the Home Office to make returns on behalf of the employers insured or represented by it. Otherwise he must make the return, obtaining any particulars required from the Company or Association.

(5) In filling up the form it is particularly requested that no blanks may be left. Columns in which there are no entries to be made should have *NIL* written across them.

N.B.—A separate return should be made for EACH of the following industries:—

(1) Factories, (2) Mines, (3) Quarries, (4) Railways, (5) Docks, (6) Steamships, (7) Sailing Vessels, (8) Constructional Work.

Name of Employer_____

Address of Works (or Office)_____

Industry (and, in case of factories, nature of work carried on)_____

_____

* Approximate average Number of Persons employed to whom the Act applies ... ... { Male_____ Female_____

* In case of Shipowners the gross tonnage of the vessels will also require to be stated.

ACCIDENTS.

A.—*Cases of death (whether compensation paid into court or to legal personal representative).*

	No. of cases in which compensation paid during 190 .	Total amount of compensation paid during 190 .
(a) Cases where there were persons wholly dependent*		
(b) Cases where there were only persons partly dependent		
(c) Cases where only medical and burial† expenses paid		
Total		

* Including cases in which compensation paid *both* to persons wholly *and* to persons partly dependent.

† Expenses incurred under Section 34 of the Merchant Shipping Act, 1906, should not be included.

Digitized by Google

B.—*Cases of persons temporarily or permanently disabled.*

I. Total figures for 190 .

——	No. of cases in which compensation paid during 190 .	Total amount of compensation paid during 190 .
Cases continued from previous years		
Cases in which the first payment of compensation was made during 190		
Total		

II. Particulars as to duration of Compensation.

State in following Table how many cases were terminated during 190 after payment (whether in 190 or in previous years) of less than 2 weeks' compensation, of 2 weeks' compensation but less than 3, and so on.

(Cases terminated by payment of a lump sum should *not* be included.)

Less than 2 weeks.	2 weeks and less than 3.	3 weeks and less than 4.	4 weeks and less than 13.	13 weeks and less than 26.	26 weeks and over.

IIa. Additional particulars as to cases not terminated at end of 190 which had lasted more than 1 year.

Over 1 year and less than 2.	2 years and less than 5.	5 years and less than 10.	10 years and over.

Digitized by Google

III. Particulars as to non-fatal cases settled by payment of lump sums.*

	Number of cases.	Total amount paid.
Cases settled by payment of lump sum without previous weekly payments		
Cases settled by payment of lump sum after previous weekly payments:—		
(i) Where weekly payments had lasted less than 26 weeks		
(ii) Where weekly payments had lasted 26 weeks and over		
Total		

* Cases in which the lump sum was only the aggregate of a number of separate weekly payments already due should not be entered in this Table but in Table II.

Industrial Diseases.

A.—*Cases of death (whether compensation paid into court or to legal personal representative).*

——	No. of cases in which compensation paid during 190 .	Total amount of compensation paid during 190 .
(a) Cases where there were persons wholly dependent*		
(b) Cases where there were only persons partly dependent		
(c) Cases where only medical and burial† expenses paid		
Total		

* Including cases in which compensation paid *both* to persons wholly *and* to persons partly dependent.
† Expenses incurred under section 34 of the Merchant Shipping Act, 1906, should not be included.

B.—*Cases of persons temporarily or permanently disabled.*

I. Total figures for 190 .

——	No. of cases in which compensation paid during 190 .	Total amount of compensation paid during 190 .
Cases continued from previous years		
Cases in which the first payment of compensation was made during 190		
Total		

Digitized by Google

II. Particulars as to duration of Compensation.

State in following Table how many cases were terminated during 190 after payment (whether in 190 or in previous years) of less than 2 weeks' compensation, of 2 weeks' compensation but less than 3, and so on.

(Cases terminated by payment of a lump sum should *not* be included.)

Less than 2 weeks.	2 weeks and less than 3.	3 weeks and less than 4.	4 weeks and less than 13.	13 weeks and less than 26.	26 weeks and over.

IIa. Additional particulars as to cases not terminated at end of 190 which had lasted more than 1 year.

Over 1 year and less than 2.	2 years and less than 5.	5 years and less than 10.	10 years and over.

III. Particulars as to non-fatal cases settled by payment of lump sums.*

	Number of cases.	Total amount paid.
Cases settled by payment of lump sum without previous weekly payments		
Cases settled by payment of lump sum after previous weekly payments:—		
(i) Where weekly payments had lasted less than 26 weeks		
(ii) Where weekly payments had lasted 26 weeks and over		
Total		

* Cases in which the lump sum was only the aggregate of a number of separate weekly payments already due should not be entered in this Table but in Table II.

Digitized by Google

Further particulars as to cases of Industrial Disease.

Name of Disease.	Number of cases in which compensation paid.	
	Continued from previous years.	Arising during 190 .
Anthrax		
Lead poisoning or its sequelæ		
Mercury poisoning or its sequelæ		
Phosphorus poisoning or its sequelæ		
Arsenic poisoning or its sequelæ		
Ankylostomiasis		
Poisoning by nitro- and amido-derivatives of benzine (dinitro-benzol, anilin, and others), or its sequelæ		
Poisoning by carbon-bisulphide or its sequelæ		
Poisoning by nitrous fumes or its sequelæ ...		
Poisoning by nickel carbonyl or its sequelæ ...		
Poisoning by *Gonioma Kamassi* (African box-wood) or its sequelæ		
Chrome ulceration or its sequelæ		
Eczematous ulceration of the skin produced by dust, or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust		
Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds		
Scrotal epithelioma (chimney-sweeps' cancer)		
Nystagmus		
Glanders		
Compressed-air illness or its sequelæ		
Subcutaneous cellulitis of the hand (beat hand)		
Subcutaneous cellulitis over the patella (miners' beat knee)		
Acute bursitis over the elbow (miners' beat elbow)		
Inflammation of the synovial lining of the wrist joint and tendon sheaths		

Digitized by Google

APPENDIX I

Order of the Secretary of State, dated May 22, 1907, extending the provisions of the Workmen's Compensation Act, 1906, to certain Industrial Diseases.

Whereas by section 8 of the Workmen's Compensation Act, 1906, the provisions of that Act are applied, in certain cases and subject to certain modifications, to workmen disabled by, or suspended from their usual employment on account of their having contracted, a disease mentioned in the Third Schedule to the Act;

And whereas it is enacted by sub-section (2) of the said section that if the workman at or immediately before the date of his disablement or suspension was employed in a process mentioned in the second column of the Third Schedule to the Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, then the disease shall be deemed, except as otherwise provided in the sub-section, to have been due to the nature of that employment unless the employer proves the contrary;

And whereas sub-section (6) of the same section empowers the Secretary of State to make Orders for extending the provisions of that section to other diseases and other processes, and to injuries due to the nature of any employment specified in the Order not being injuries by accident, either without modification or subject to such modifications as may be contained in the Order;

Now I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, by this Order made under sub-section (6) of the said section, do hereby direct that the provisions of section 8 of the Workmen's Compensation Act, 1906, shall extend and apply to the diseases, injuries, and processes, specified in the first and second columns of the Schedule annexed to this Order, as if the said diseases and injuries were included in the first

Digitized by Google

column of the Third Schedule to the Act and as if the said processes were set opposite in the second column of that Schedule to the diseases or injuries to which they are set opposite in the second column of the Schedule annexed hereto.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

Whitehall,
May 22nd, 1907.

Schedule.

Description of Disease or Injury.	Description of Process.
1. Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelae.	Any process involving the use of a nitro- or amido-derivative of benzene or its preparations or compounds.
2. Poisoning by carbon bisulphide or its sequelae.	Any process involving the use of carbon bisulphide or its preparations or compounds.
3. Poisoning by nitrous fumes or its sequelae.	Any process in which nitrous fumes are evolved.
4. Poisoning by nickel carbonyl or its sequelae.	Any process in which nickel carbonyl gas is evolved.
5. Arsenic poisoning or its sequelae.	Handling of arsenic or its preparations or compounds.
6. Lead poisoning or its sequelae.	Handling of lead or its preparations or compounds.
7. Poisoning by *Gonioma Kamassi* (African boxwood) or its sequelae.	Any process in the manufacture of articles from *Gonioma Kamassi* (African boxwood).
8. Chrome ulceration or its sequelae.	Any process involving the use of chromic acid or bi-chromate of ammonium, potassium, or sodium, or their preparations.
9. Eczematous ulceration of the skin produced by dust or caustic or corrosive liquids, or ulceration of the mucous membrane of the nose or mouth produced by dust.	—

Digitized by Google

Description of Disease or Injury.	Description of Process.
10. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to pitch, tar, or tarry compounds.	Handling or use of pitch, tar, or tarry compounds.
11. Scrotal epithelioma (chimney-sweeps' cancer).	Chimney-sweeping.
12. Nystagmus	Mining.
13. Glanders	Care of any equine animal suffering from glanders; handling the carcase of such animal.
14. Compressed-air illness or its sequelae.	Any process carried on in compressed air.
15. Subcutaneous cellulitis of the hand (beat hand).	Mining.
16. Subcutaneous cellulitis over the patella (miners' beat knee).	Mining.
17. Acute bursitis over the elbow (miners' beat elbow).	Mining.
18. Inflammation of the synovial lining of the wrist joint and tendon sheaths.	Mining.

Digitized by Google

APPENDIX J

The Workmen's Compensation Rules, 1908. Dated March 14, 1908.

The following Rules shall have effect under the Workmen's Compensation Act, 1906.

These Rules may be cited as the Workmen's Compensation Rules, 1908, or each Rule may be cited as if it had been one of the Workmen's Compensation Rules, 1907 (herein referred to as the principal Rules), and had been numbered therein by the number of the rule placed in the margin opposite such Rule.

These Rules shall come into operation on the 1st day of May, one thousand nine hundred and eight.

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

1. The following paragraph shall be added to Rule 5 of the principal Rules, viz.:—

(4.) The Registrar shall within twenty-four hours from the time of payment made pursuant to the last preceding paragraph send notice thereof to the applicant and to the other respondents (if any), and the employer shall not be liable to any costs otherwise than in accordance with paragraph 5 (*c*) of Rule 18.

Industrial Diseases.

2. Paragraph 1 of Rule 89 of the principal Rules is hereby annulled, and the following paragraph shall stand in lieu thereof, viz.:— Amendment of Rule 89.

Digitized by Google

(1.) In the application of the Act and these Rules in the case of a workman disabled by or suspended on account of his having contracted any disease mentioned in section 8 of and the third schedule to the Act, or in any order of the Secretary of State made under sub-section 6 of the said section, or disabled by or suspended on account of his having sustained any injury due to the nature of any employment specified in any such order, not being an injury by accident, or in the case of a workman whose death has been caused by any such disease or injury as above mentioned, the following provisions shall have effect.

Notice of Day fixed.

Amendment of Rule 14.

3. Rule 14 of the principal Rules shall be read and construed as if the words "signed by the registrar himself and" were omitted therefrom.

Payment into Court and Investment and Application of Money payable in case of Death. Schedule I., Paragraph 5.

4. Rule 56 of the principal Rules is hereby annulled, and the following Rule shall stand in lieu thereof:—

Payment into court, investment, and application of payment in case of death. Act, Sched. 1, par. 5.

56A.—(1.) Where any payment in the case of death is to be paid into the County Court pursuant to paragraph 5 of the first schedule to the Act, the following provisions shall have effect.

(2.) Where any money is to be paid into court under an award made by the judge or an arbitrator appointed by him, payment shall be made in accordance with the directions contained in the award.

(3.) In any other case payment shall be made into the court in which the memorandum of the decision, award, or agreement under which the money is to be paid, or the certificate under which the money is to be paid, has been or is to be recorded.

(4.) If there is no dispute as to the amount payable, but no valid agreement can be come to by reason of the disability or absence of the dependants or any of them, payment shall be made into the court in which, if a valid agreement could be come to in the matter, such agreement would be recorded.

(5.) Where money is to be paid into court under paragraph 2 or paragraph 3 of this Rule, the employer shall lodge with the registrar a præcipe in duplicate according to the form 53 in the Appendix, and where money is to be paid into court under paragraph 4, the employer shall lodge with the registrar a præcipe in duplicate according to the form 53A in the Appendix. The employer shall annex to one copy of the præcipe a form of receipt, and the

Forms 53, 53A.

Digitized by Google

registrar, on receipt of the sum paid in, shall sign the receipt and return the same to the employer; and the employer shall forthwith give notice to the persons interested in the sum paid in of such payment having been made.

(6.) On the payment of money into court, the registrar shall forthwith send by post to each of the persons appearing by the award, memorandum, certificate, or præcipe to be interested in such money a notice of the said payment according to the form 58B in the Appendix. Form 58B. Provided that in the case of infant dependants residing with their mother or guardian it shall be sufficient to send such notice to the mother or guardian only.

(7.) If all questions as to who are dependants and the amount payable to each dependant have been settled by agreement or arbitration before payment into court, the sum paid into court shall be allotted between the dependants in accordance with the agreement or award, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(8.) If such questions have not been settled before payment into court, then—

(*a*) If all the persons interested in the sum paid into court agree to leave the application thereof to the court, or if no question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, but any of the persons interested in the said sum are absent or under disability, the amount paid into court shall, on application by or on behalf of the persons interested therein, be invested, applied, or otherwise dealt with by the court for the benefit of the persons interested therein in accordance with paragraph 5 of the first schedule to the Act.

(*b*) If any question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, such question shall be settled by the court by arbitration in accordance with these Rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(9.) Where any question is settled by the court by arbitration in accordance with the last preceding paragraph, an application for the investment or application of any sum allotted to any person on such arbitration may be made at or immediately after the hearing of the arbitration.

Digitized by Google

(10.)—(*a.*) Where application is not so made, or in any other case coming within paragraph 5 of the first schedule to the Act, an application for the investment or application of any sum paid into court, or of the amount allotted to any person, shall be made in court on notice in writing, stating on whose behalf the application is made, and the order which the applicant asks, according to the form in the Appendix.

Form 53c.

(*b.*) The notice shall be filed with the registrar, and where the application is made by or on behalf of some only of the persons interested, notice thereof shall be served on all other parties interested, or on their solicitors, five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(*c.*) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(*d.*) On the hearing of the application the judge may, after making or directing such inquiries as to the dependants and on such evidence of title and identity as he may think necessary, make such order under paragraph 5 of the first schedule to the Act and this rule as he may think fit.

(*e.*) The provisions of this Act and these Rules as to the costs of an arbitration shall apply to any such application.

(11.) An employer paying money into court under this rule shall not be liable to any costs incurred by any person interested in such money after the receipt of notice of payment into court; but the judge may, in his discretion, order such employer to pay the costs of any such person properly incurred before the receipt of such notice.

(12.) Every order for the investment or application of money paid into court shall reserve liberty to the parties interested to apply to the court as they may be advised.

(13.) Where any sum allotted to any person under paragraph 5 of the first schedule to the Act or this rule is ordered to be paid out to or applied for the benefit of the person entitled thereto, by weekly or other periodical payments, such payments may be made to the person entitled to receive the same either at the office of the registrar, or, on the written request of such person, by crossed cheque or Post Office order addressed to such person and forwarded by registered post letter, payment by post being in all cases at the cost and risk of the person requesting the same.

Digitized by Google

Proceedings where Workman receiving weekly payment intends to cease to reside in the United Kingdom. Schedule I., Paragraph 18.

5. Paragraphs 3 to 7 of Rule 60 of the principal Rules and Forms 56, 57, and 58, are hereby annulled, and the following paragraphs and Forms 56A, 57A, and 58A in the Appendix shall stand in lieu thereof:— Amendment of Rule 60 and Forms 56, 57, and 58.

60.—(3.) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar, and shall be accompanied by a report of a medical practitioner selected by the workman, setting out the nature of the incapacity alleged to be the result of the injury; and a copy of the application and of the report shall be served on the employer or his solicitor in accordance with Rule 48; and the applicant shall file a copy of the application and of the report for the use of the medical referee. Form 56A.

(4.) The employer may, on being served with notice of the application, require the workman to submit himself for examination by a medical practitioner provided and paid by the employer, in accordance with paragraph 14 of the first schedule to the Act; and if the employer requires the workman to submit himself for such examination he shall before or at the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

(4A.) The workman and the employer respectively may before or at the hearing of the application submit to the registrar such statements in writing as they may think fit, with copies of such statements for the use of the medical referee.

(5.) On the hearing of the application the registrar, on being satisfied that the applicant has a *bonâ fide* intention of ceasing to reside in the United Kingdom, shall make an order referring the question to a medical referee; and if he is not so satisfied, he may refuse to make an order, but in that case he shall, if so requested by the applicant, refer the matter to the judge, who may make such order or give such directions as he may think fit. Form 57A.

(6.) If the registrar or the judge makes an order referring the question to a medical referee, he shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 3 to 6 of Rule 54 shall with the necessary modifications apply. Form 50.

Digitized by Google

(6A.) The registrar shall with the order of reference forward to the medical referee copies of any statements submitted to him by either party.

(7.) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying therein the nature of the incapacity of the workman resulting from the injury, and whether such incapacity is likely to be of a permanent nature; and the registrar shall thereupon proceed in accordance with paragraph 8 of Rule 54.

Form 51.

APPENDIX.

Form 58.

[See Appendix to Principal Rules.]

Form 58A.

Præcipe for Payment into Court under Schedule I., paragraph 5, where no valid Agreement can be come to.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

No. of matter.

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an injury by accident to A.B. , late of , which resulted in the death of the said A.B.

Take Notice,

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused at (*state place of accident*) to A.B. , late of deceased, a workman employed by [*or* by , a contractor with for the execution of work undertaken by them], and on the day of the death of the said A.B. resulted from the injury.

Digitized by Google

2. There is no dispute as to the liability of the said to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B., or as to the amount payable as compensation, but no valid agreement can be come to in the matter by reason of the disability [*or* absence] of the dependants or some of them.

3. The said of [*or* Messrs. , solicitors for the said of] do therefore pay into court [*when paid by solicitors, add* at the request of the said] the sum of (*state sum in letters*), being the amount payable by the said as compensation in the above-mentioned matter.

4. To the best of the knowledge and belief of the said the persons interested in the said sum as dependants of the said A.B. are

[*State dependants, with their ages and relationship to deceased workman, and places of residence, so far as known.*]

Dated this day of .

(Signed)

[*or*

Solicitors for

.]

To the Registrar.

Received the above-mentioned sum of .

Registrar.

(*Date.*)

FORM 58B.

Notice by Registrar of Payment into Court under Schedule I., *paragraph* 5.

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

TAKE NOTICE, that the sum of has been paid into court as compensation in the above-mentioned matter.

Any person interested in the said sum may apply to the court for

Digitized by Google

an order for the investment and application of the said sum for the benefit of the persons entitled thereto in accordance with paragraph 5 of the first schedule to the Workmen's Compensation Act, 1906, and the rules of court made under the said Act.

Dated this day of .

Registrar.

To

Hours of attendance, &c.

FORM 58C.

Application for Investment or Application of Money paid into Court under Schedule I., paragraph 5.

[*Not to be printed, but to be used as a Precedent.*]

(1) *Application for investment and application of the sum paid into court.*

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at , on the day of , at the hour of in the noon, on behalf of myself and of [*specify the persons on whose behalf the application is made*], as dependants of the above-named A.B., for an order for the investment and application of the sum paid into court in the above-mentioned matter, and for the allotment of the same between the dependants of the said A.B.

To the best of my knowledge and belief the persons interested in the said sum as dependants of the said A.B. are

[*State dependants, with their ages and relationship to deceased workman, and places of residence.*]

Digitized by Google

I intend to apply for an order for the investment and application of the said sum, and for the allotment of the same between the dependants of the said A.B. as follows, viz.:—

[*State how applicant wishes the sum to be dealt with*]

or in such other manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under the above-mentioned Act, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar and (*to any other parties interested, where the application is made on behalf of some only of the parties interested.*)

---

(2) *Application for Investment and Application of the Amount allotted to any Person.*

In the County Court of holden at .

[*Heading as in Præcipe for Payment into Court.*]

TAKE NOTICE, that I (*name and address of applicant*) intend to apply to the judge at on the day of at the hour of in the noon, on behalf of myself [*or* of] for an order for the investment and application of the sum paid into court in the above-mentioned matter and allotted to me [*or* to the said].

I intend to apply for an order for the investment and application of the said sum as follows, viz.:—

[*State how applicant wishes the sum to be dealt with*]

Digitized by Google

or in such other manner as the court in its discretion thinks fit for my benefit [*or* for the benefit of the said], and for consequential directions.

Dated this day of .

(Signed)

To the Registrar.

FORM 56A.

Application by Workman intending to cease to reside in the United Kingdom for Reference to Medical Referee under Schedule I., paragraph 18.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an agreement [*or* a decision *or* an award *or* a certificate] recorded in the above-mentioned Court as to the weekly payment payable to A.B. of by C.D. & Co., Limited, of .

TAKE NOTICE, that A.B. of , to whom under an agreement [*or* a decision *or* an award *or* a certificate] in the above-mentioned matter recorded in this Court on the day of a weekly payment of is payable by the above-mentioned C.D. & Co., Limited, as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment, intends to cease to reside in the United Kingdom;

And that the said A.B. intends to apply to the registrar at , on the day of , at the hour of in the noon, for an order referring to a medical referee the question whether the incapacity of the said A.B. resulting from the injury is likely to be of a permanent nature.

A report of a medical practitioner, setting out the nature of the incapacity of the said A.B. resulting from the injury, is hereto annexed.

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

To the Registrar of the Court
and to (*the employer*).

Digitized by Google

FORM 57A.

Order of Reference, Schedule I., paragraph 18.

In the County Court of holden at .

[*Heading as in Application, Form* 56A.]

On the application of of
(a copy of which is hereto annexed),

I hereby appoint Mr. of
one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*name of workman*) , and to give his certificate as to whether the incapacity of the said (*name of workman*)
resulting from the injury is likely to be of a permanent nature.

A copy [*or* copies] of the report [*or* reports] of the medical practitioner [*or* practitioners] by whom the said has been examined is [*or* are] hereto annexed. [*Add, if so*, Copies of the statements submitted to me by the parties are also hereto annexed.]

The said , who is now at ,
has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situate at
on or before the day of , specifying therein the nature of the incapacity of the said resulting from the injury, and whether such incapacity is likely to be of a permanent nature.

Dated this day of .

Judge [*or* Registrar].

LIBRARY OF THE UNIVERSITY OF CALIFORNIA

Digitized by Google

FORM 58A.

[*To be printed on thick blue foolscap.*]

Certificate of Identity.

[TO BE CAREFULLY PRESERVED.]

NOTICE.—THIS CERTIFICATE IS NO SECURITY WHATEVER FOR A DEBT.

No. of Certificate

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

This is to certify that A.B. late of (*address and description*) is entitled to a weekly payment of from (*name and address of employer*) as compensation payable to the said A.B. in respect of personal injury caused to him by accident arising out of and in the course of his employment, such weekly payment to continue during the total or partial incapacity of the said A.B. for work:

And that the description of the said A.B. and his incapacity for work, as certified by the medical referee appointed in this matter, are as follows:—

Age,

Height,

Hair, Eyes,

Nature of incapacity,

[*Describe nature of incapacity, as in certificate of medical referee.*]

Dated this day of .

Registrar.

We William L. Selfe, William Cecil Smyly, Robert Woodfall, Thomas C. Granger, and H. Tindal Atkinson, being the five judges of the County Courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph twelve of the Second Schedule to the Workmen's Compensation Act, 1906, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Wm. L. Selfe.
William Cecil Smyly.
R. Woodfall.
T. C. Granger.
H. Tindal Atkinson.

I allow these Rules,

Loreburn, C.

The 14th of March, 1908.

Digitized by Google

Memorandum.

Rule 1 provides what costs may be allowed against an employer who pays an agreed amount of compensation into court in an arbitration under Rule 5.

Rule 2 amends Rule 39 as to industrial diseases, as orders have been made by the Secretary of State under sub-section 6 of section 8, extending that section to other diseases than those mentioned therein and in the third schedule to the Act.

Rule 4 amends and re-enacts Rule 56, as to payment into court in case of death. The amendments are intended to meet what will probably be the most common case under the Act, viz., that of a fatal accident to a workman who leaves a widow and infant children, where the employer admits liability and is willing to pay the full amount of compensation, but no valid agreement can be come to because of the legal disability of the children.

Many such cases have already occurred, and it has been pointed out that the Rules and forms do not provide for payment into court and application for investment, &c., in such cases.

Rule 56 has therefore been revised with a view to supplying the deficiency; it prescribes the court into which payment is to be made, and a form to be used for payment into court, and prescribes forms of application for investment, &c., and the procedure on such applications. It also provides for notice of payment into court being given by the registrar, as there is no means of compelling the employers to give notice as prescribed by the rule, and they often omit or delay to do so; and it limits the liability of employers as to costs.

Rule 5 brings Rule 60 and the forms into conformity with paragraph 18 of the first schedule to the Act, and with the form of certificate prescribed by the Secretary of State, which do not require the certificate of the medical referee to state whether the disablement is total or partial; and makes further provision, in accordance with suggestions by the Secretary of State, as to applications for certificates.

March, 1908.

Digitized by Google

APPENDIX K

Treasury Order, dated December 30, 1903, regulating Court Fees in County Courts.

51 & 52 Vict. c. 43.

In pursuance of the powers given by the County Courts Act, 1888, and of all other powers enabling us in this behalf, We, the undersigned, two of the Commissioners of His Majesty's Treasury, whose names are hereunto subscribed, do hereby, with the consent of the Lord Chancellor, order that, on and after the 1st day of March, 1904, the several fees or sums in the name of fees specified in the Schedules hereunder written shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings set forth; and that the fees so authorised to be taken, with the exception of the fees mentioned in Schedule (B.), shall be received by the registrars of the different County Courts, and shall (except where otherwise directed) be accounted for and paid over by them to the Superintendent of County Courts, and that the fees set forth in Schedule (B.) shall be received by the registrars for the use of themselves and of the high bailiffs, according as the duties are to be performed by the registrars or high bailiffs, except in the case of registrars included in any Order under section 45 of the County Courts Act, 1888, in which case the fees received by them under Schedule (B.) shall be accounted for and paid over by them as may be directed by the Lord Chancellor and the Treasury.

H. W. Forster.
Balcarres.

I approve of the annexed Schedules of Fees.

Halsbury, C.

Digitized by Google

[*In the following Schedules "the Act" means the County Courts Act*, 1888. *An Order or Rule referred to in the following Schedules means the Order or Rule so numbered in the County Court Rules*, 1908.]

SCHEDULE (A.).

1. For every plaint or petition, one shilling in the pound.

2. Where the claim or demand exceeds forty shillings, and an ordinary summons is to be served by a bailiff, an additional fee of one shilling. This fee is not to be taken where a default summons is issued, or in any case in which a fee for service is prescribed by Schedule (B.).

3. Where in any case the number of defendants exceeds three, and an ordinary summons is to be served by a bailiff, an additional fee of one shilling for each defendant above three. This fee is not to be taken where a default summons is issued, or in any case in which a fee for service is prescribed by Schedule (B.).

4. Where a defendant claims a set-off, or sets up a counter-claim in an action or matter commenced in a county court, he shall, on giving notice of such set-off or counter-claim, or at any later stage at which he claims such set off, or sets up such counter-claim, pay a plaint fee on the amount thereof, less the fee paid by the plaintiff on entering the plaint. This paragraph shall not apply to actions or matters commenced in the High Court and remitted or transferred to a county court.

5. For entering judgment by consent under section 98 or section 99 of the Act, or for entering judgment under a default summons where no notice of defence has been given, or under Order XXII., Rule 7, where the plaintiff appears and the defendant does not appear, one shilling in the pound on the amount claimed in the summons; or if the plaintiff abandon any part of his claim, one shilling in the pound on the reduced amount of the claim after such abandonment, including in such reduced amount the amount (if any) paid into court or to the plaintiff. Where a default summons is issued, and no notice of defence is given, but the claim is paid without costs, and the plaintiff enters up judgment for costs only under section 86 of the Act, no fee shall be payable.

6. For entering final or interlocutory judgment in an Admiralty action, on default of appearance, one shilling in the pound.

7. For every hearing, two shillings in the pound. To be charged once only in an action or matter, unless a new trial is ordered. Where separate trials are ordered under Order III, Rule 1, or Order IV., Rule 7, a separate hearing fee shall be paid on each trial.

Digitized by Google

8. No hearing fee shall be taken where the trial of any action or matter is postponed or adjourned once before the action or matter is called on for hearing, or after it has been called on, but before it is opened; but if a second postponement or adjournment is granted, or an adjournment is granted after an action or matter has been called on for hearing and opened, the hearing fee must be paid, and no part of such fee shall be returned without the sanction of the Treasury notwithstanding any provision contained in any other paragraph of this Schedule.

9. Where an order of reference is made under section 104 of the Act, or under Order XX., the same fee shall be paid as would have been payable on entering judgment under a default summons under paragraph 5, unless a reference is ordered to the registrar or some other officer of the court, in which case the same hearing fee shall be paid as if the action had been tried. In such last mentioned case, or where a matter of account is referred to the registrar under section 92 of the Act, one-half of the hearing fee may, where the claim or demand exceeds forty shillings, and the reference is proceeded with, be retained by the registrar for the use of himself or of the officer to whom the reference is ordered unless the order of reference is made at a sitting of the court, and the reference is concluded on the day on which the order is made.

10. Where before an action or matter is called on for trial, or in opening his case when called on, the plaintiff abandons any part of his claim, the hearing fee shall be charged only on the reduced amount which the plaintiff seeks to recover after such abandonment, including in such reduced amount the amount (if any) paid into court, or to the plaintiff, or otherwise admitted by the defendant.

11. In all cases where the defendant either personally or by his solicitor or any other person allowed to appear for the defendant admits the claim (whatever its nature may be), or where the judge or registrar accepts a letter addressed to the court as an admission of the claim, one-half of the fee paid by the plaintiff for the hearing of the plaint under paragraph 7 or paragraph 10 (as the case may be) shall be returned to the plaintiff by the registrar of the court, although the court may have been required to decide upon the terms and conditions upon which the claim is to be paid.

12. Where in an action for a debt or liquidated money demand the defendant does not appear, one-half of the fee paid by the plaintiff for the hearing of the plaint under paragraph 7 or paragraph 10 (as the case may be) shall be returned to the plaintiff by the registrar of the court, less, where the claim or

Digitized by Google

demand does not exceed forty shillings, the sum of one shilling, and where the claim or demand exceeds forty shillings, the sum of two shillings. For the purposes of this paragraph a claim for rent or mesne profits added to a claim for the recovery of a tenement under section 138 of the Act, or a claim for the recovery of a tenement for non-payment of rent under section 139, shall be deemed to be a claim for a liquidated money demand. This paragraph shall not apply to cases coming within either paragraph 5 or paragraph 11.

13. Where any action or matter in which a set-off is claimed or a counter-claim is set up is brought to a hearing, the plaintiff shall pay the same hearing fee on the claim as would have been payable if there had been no set-off or counter-claim, and the defendant shall pay the same hearing fee on the set-off or counter-claim as would have been payable if such set-off or counter-claim had been the subject of a separate action, less the fee paid by the plaintiff for the hearing of the plaint. The provisions of paragraphs 10 and 11 as to abandonment and admission shall apply to the fees payable by the plaintiff and defendant respectively; and the fee to be paid by the defendant shall be calculated on the amount claimed by him at the hearing, after deducting the fee or half-fee (as the case may be) payable by the plaintiff on the amount claimed by him at the hearing.

14. Where a plaintiff does not appear, or discontinues his action, or withdraws his claim, or a sum paid into court is accepted in full satisfaction of the claim, and a defendant claiming a set-off or setting up a counter-claim desires to proceed and obtain judgment on such set-off or counter-claim, he shall pay a hearing fee on the amount which he seeks to recover on such set-off or counter-claim, subject to the provisions of paragraph 10 as to abandonment, and of paragraph 11 as to the return of one-half of such fee if the plaintiff admits the set-off or counter-claim, and subject also to the provisions of paragraph 12 if the plaintiff does not appear.

15. No fee shall be payable on an application for a new trial or to set aside proceedings, or for the hearing of such application, or on an inter-pleader summons, or on an application under Order IX., Rule 18, paragraph 3, Rule 15 or Rule 20, paragraph 3, for fees and costs, or on an application for an order as to costs under Order XXXIX., Rules 77 to 79.

16. An additional hearing fee shall be taken for every new trial: provided, that where a fee of two shillings in the pound has been taken on the original hearing, the provisions of paragraphs 5, 10, 11, and 12 shall apply to the additional hearing fee to be taken on a new trial: provided also, that where the defendant

Digitized by Google

does not appear at the original hearing and a new trial is ordered on his application at the same court, the additional hearing fee shall be such sum as will, with the fee taken on the original hearing, make up a total of two shillings in the pound on the amount which the plaintiff seeks to recover on the new trial after any abandonment made pursuant to paragraph 10 before or at the new trial; and where the defendant does not appear at the original hearing, and a new trial is ordered on his application at a subsequent court, the additional hearing fee shall be such sum as will, with the fee taken on the original hearing, make up a total of three shillings in the pound on the amount which the plaintiff seeks to recover after any such abandonment as aforesaid, or, if the defendant on the new trial admits the claim or does not appear, a total of two shillings in the pound on such amount. The additional hearing fee on a new trial shall be payable in the first instance by the party by whom the same shall be directed to be paid by the order directing a new trial to be had, and in default of such direction shall be payable in the first instance by the party on whose application the new trial is ordered, subject to the power of the judge in any case to direct by whom such fee shall be ultimately borne.

17. The hearing fee on interpleader shall be prepaid by the claimant, and shall be calculated on the amount of the money in court or in the hands of the sheriff, or the amount of the money claimed, or the assessed value of the goods claimed, or, if such value has not been assessed, the value put upon them by the claimant, plus in either case the amount of the damages (if any) claimed, but subject to the provisions of this Order as to calculating poundage where the amount or value of the subject-matter exceeds twenty pounds; and the judge at the hearing shall direct by whom such fee shall be ultimately borne.

18. Where an interpleader summons is issued under Order XXVII., Rule 15, and is heard with the action, no hearing fee shall be paid on the interpleader; but if the plaintiff in the action appears upon the return day, and withdraws or abandons his claim without a hearing of the action, and the claimant requests the judge to make an order in his favour against the defendant, a hearing fee on the interpleader shall be paid by the claimant.

19. Where a notice of claim to contribution or indemnity is filed under Order XI., a fee shall be paid on entering judgment on such claim, or on the hearing of such claim, in like manner as on entering judgment on a default summons under paragraph 5, or the hearing of an action, as the case may be.

20. Fees shall be charged on a summons under section 49 or section 50 of the Act, and Order LII., Rule 4, as on an ordinary

Digitized by Google

summons; but no fee shall be payable on a summons under section 48 of the Act.

21. For issuing every warrant upon a judgment or order of a county court [other than a warrant according to any of the forms numbered 146, 289, 357, 366, 367, and 372], eighteen pence in the pound on the amount for which such warrant issues, if such amount does not exceed ten pounds, and one shilling in the pound on any excess above ten pounds, but subject to the provisions of this Order as to calculating poundage where the amount or value of the subject-matter exceeds twenty pounds; less, in any case in which fees for the issue and execution of such warrant are prescribed by Schedule (B.), the amount of such fees.

22. For every judgment summons under the Debtors Act, 1869, upon a judgment or order of a county court, three pence in the pound on so much of the amount of the original demand and costs as, in obedience to the judgment or order of the court, should have been paid at the time of the issue of the summons, with an additional fee of sixpence, but so that the total fee shall not exceed five shillings; less, in any case in which fees for the issue and service of a summons for commitment are prescribed by Schedule (B.), the amount of such fees.

23. For the hearing of any such judgment summons, sixpence in the pound on the amount upon which the fee on the summons was calculated.

24. For the hearing of any judgment summons issued upon a judgment or order of a court other than a county court, sixpence in the pound on the amount upon which the fee on the summons would have been calculated had the summons been issued upon a judgment or order of a county court.

25. The provisions of paragraph 8 shall apply to the hearing of a judgment summons in like manner as to the trial of an action.

26. For issuing every order of commitment upon a judgment or order of a county court, eighteen pence in the pound on the amount for which the order of commitment issues, if such amount does not exceed ten pounds, and one shilling in the pound on any excess above ten pounds, but subject to the provisions of this Order as to calculating poundage where the amount or value of the subject-matter exceeds twenty pounds; less, in any case in which fees for the issue and execution of orders of commitment are prescribed by Schedule (B.), the amount of such fees.

Digitized by Google

27. All poundage, except where otherwise herein specified, shall be calculated upon the amount or value of the subject-matter of the proceeding upon which it is payable.

28. All fractions of a pound, for the purpose of calculating poundage, shall be treated as an entire pound.

29. Where the amount or value of the subject-matter of any proceeding, or the amount on which poundage is by any paragraph of this Order directed to be calculated, exceeds twenty pounds poundage shall be calculated on twenty pounds only.

30. In plaints under section 59 or section 60 of the Act, poundage shall be calculated as upon a claim for a sum of twenty pounds.

31. In garnishee actions the poundage shall, subject to paragraph 29, be calculated on the amount of the debt sought to be attached, or of the judgment debt, whichever is the less.

32. In replevins all poundage shall, subject as aforesaid, be calculated on the amount of the alleged rent or damage, to be fixed by the registrar.

33. In plaints for the recovery of tenements when the term has expired, or been determined by notice, all poundage shall, subject as aforesaid, be calculated on the amount of the weekly, monthly, quarterly, half-yearly, or yearly rent of the tenement, as such tenement shall have been let by the week or by the month, or for any longer period; and if no rent shall have been reserved, then on the amount of the half-yearly value of the tenement, to be fixed by the registrar.

34. Where a claim for rent or mesne profits, or both, is added to a plaint for the recovery of a tenement, an additional poundage shall be taken on the amount or amounts so claimed; but where thereby the total amounts on which poundage would be taken shall exceed twenty pounds, the poundage shall be calculated on twenty pounds only.

35. In plaints for the recovery of tenements for non-payment of rent, all poundage shall, subject as aforesaid, be calculated on the amount of the half-yearly rent of the tenement.

36. In actions in which a perpetual injunction is claimed, the poundage shall be calculated as upon a claim for a sum of twenty pounds.

37. In proceedings under the Succession Duty Act, 1853, or the Finance Act, 1894, the poundage shall, subject as aforesaid, be calculated upon the amount in dispute.

Digitized by Google

38. In proceedings under the Charitable Trusts Acts, 1853 to 1887, fees shall be payable in accordance with Rules 13 to 16 and 19 of Order XLVIII.

39. In proceedings under the Charitable Trusts (Recovery) Act, 1891, the poundage shall be calculated on the annual income of the property in dispute, or if such income is not ascertained, then as upon a claim for a sum of twenty pounds.

40. In proceedings under the Court of Probate Act, 1857, or the Court of Probate Act, 1858, the poundage shall be calculated as upon a claim for a sum of twenty pounds.

41. For the hearing of a special case stated under the Agricultural Holdings (England) Act, 1900, and Order XL., Rule 8, twenty shillings; to be paid by the party filing the case, or on whose application the case is stated.

42. In proceedings under the Agricultural Holdings (England) Act, 1900, and Order XL., Rule 4, for the removal of an arbitrator, or to set aside an award, the same fees shall be paid as would be payable in an action for a sum of twenty pounds.

43. In proceedings under the Merchant Shipping Act, 1894, the Literary and Scientific Institutions Act, 1854, or the London Buildings Act, 1894 (57 & 58 Vict. cap. ccxiii.), the poundage shall, subject as aforesaid, be calculated upon the amount in dispute, or if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds. This paragraph shall not apply to proceedings before a court of survey under the Merchant Shipping Act, 1894, but the fees on such proceedings shall be regulated by General Rules made under the said Act.

44. In proceedings under the Friendly Societies Act, 1875, the Friendly Societies Act, 1896, the Building Societies Acts, or the Industrial and Provident Societies Act, 1893 (other than proceedings for winding-up a building or industrial and provident society), the poundage shall, subject as aforesaid, be calculated upon the amount in dispute, and if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds.

45. In proceedings under any Act not mentioned in this schedule giving the court jurisdiction in any matter, such Act not being a County Courts Act, the poundage shall, subject as aforesaid, be calculated upon the amount in dispute, and if no amount is in dispute, or if the amount in dispute is not ascertained, then as upon a claim for a sum of twenty pounds.

Digitized by Google

46. In proceedings under the Workmen's Compensation Acts, 1897 and 1900, and the Workmen's Compensation Rules, 1898 to 1900, for the enforcement of an award, memorandum, or certificate, or an order for payment of costs, the same fees shall be taken as on the like proceedings for the enforcement of a judgment for the like amount given in an action, less, in any case in which fees for the issue, service, or execution of any process are prescribed by Schedule (B.), the amount of such fees; and in proceedings under the said Act and Rules for the enforcement of a charge on any sum to which an employer is entitled from insurers, the same fees shall be taken as in a garnishee action.

46A. In proceedings under the Moneylenders Act, 1900, section 2, sub-section 1, the poundage shall, subject to paragraph 29, be calculated on the amount in dispute; and if such amount cannot be ascertained, then as upon a claim for a sum of ten pounds.

47. In every case where the poundage cannot be calculated by any rule in this schedule, it shall be calculated on twenty pounds.

48. No increase of fees shall be made by reason of there being more than one plaintiff or defendant, except as before directed, where the number of defendants exceeds three.

	£	s.	d.
49. On every application under the Ballot Act, 1872, and Order L., Rule 5	1	0	0
50. For taking the acknowledgment of a married woman, where only one	1	0	0
And for every additional woman	0	10	0
51. For a warrant to replevy	0	2	6
52. For a replevin bond on deposit, where the alleged rent or damage does not exceed 20*l.*	0	10	6
53. For a replevin bond or deposit, where the alleged rent or damage exceeds 20*l.*	1	1	0
54. For notice to distrainor	0	2	6
55. For every summons to a witness or subpœna to be served by a bailiff in a home district, if served within two miles of court house	0	1	0
For every mile beyond two	0	0	6
But the total fee to be taken is in no case to exceed 8*s.*			

Digitized by Google

	£	s.	d.
56. For every summons to a witness or subpœna to be served by a bailiff in a foreign district	0	3	0
57. For every summons to a witness or subpœna to be served otherwise than by a bailiff	0	0	6
58. The fee for a summons or subpœna to be served by a bailiff is not to be taken in cases in which a fee for the service of such summons or subpœna is prescribed by Schedule (B.), and the fee for a summons to be served otherwise than by a bailiff is not to be taken in cases in which a fee for the issue of such summons or subpœna is prescribed by Schedule (B.).			
59. For every sitting to take evidence under the Companies Act, 1862, section 126	2	0	0
60. In proceedings under the Companies Act, 1867, section 11, the Companies (Memorandum of Association) Act, 1890, or the Companies Act, 1898, the same fees shall be taken, and such fees shall be applied in the same manner, as in proceedings under the Companies (Winding-up) Act, 1890.			

SCHEDULE (B.).

Part I.

General.

Registrar's Fees.

1. For examining, allowing, and filing every affidavit of debt or for leave to proceed as if personal service had been effected under section 86 of the Act, or under the Summary Procedure on Bills of Exchange Act, 1855, and Order VII., Rule 89, or an affidavit for leave to defend under the said section or the said Act, and for the order thereon, where the claim does not exceed 40*s.*	0	1	0

Digitized by Google

	£	s.	d.
2. For the like, where the claim exceeds 40*s.*	0	2	0
3. For entering writ under section 65 or section 66 of the Act, and sending notice to parties of day of trial, &c.	1	1	0
4. Taxing costs in actions under section 65 or section 66 of the Act...	0	5	0
5. On entry of plaint under section 59 or section 60 of the Act...	1	1	0
Where the plaint has not been entered under section 60, and the judge certifies that the court has exercised jurisdiction under that section, the above fee of 1*l.* 1*s.* shall be paid.			
6. On every order for a new trial in an action tried under section 59 or section 60 of the Act	0	10	6
7. Taxing costs under either of the said last-mentioned sections 59 and 60	0	10	6
8. For sealing every warrant, order of commitment, precept, or writ issued from or on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900 (not being a sealing under section 158 of the Act), 6*d.* in the pound on the amount for which it issues, if such amount does not exceed ten pounds, and 4*d.* in the pound on any excess above ten pounds (*so that the total fee does not exceed* 8*s.* 4*d.*).			
9. For issuing a judgment summons on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900.			
Where the amount for which such summons issues—			
does not exceed 40*s.*	0	1	0
exceeds 40*s.* but does not exceed 5*l.*	0	1	6
exceeds 5*l.* but does not exceed 10*l.*	0	2	0
exceeds 10*l.*	0	2	6

Digitized by Google

10. For drawing, sealing, and issuing every order under the following rules or any of them, including copy for service :—

	£	s.	d.
Order III., Rule 8			
Order V., Rule 11			
Order VII., Rules 50 (1) and 51 (2)			
Order IX., Rule 25			
Order XII., Rules 1, 2, 3, and 5 to 8			
Order XII., Rule 10 (if application made before the trial)			
Order XIII., Rule 1			
Order XIV., Rule 11			
Order XV., Rules 1 and 8			
Order XVI., Rules 1 to 8, 10, 12, 16, 17, 19, and 20	0	4	0
Order XVIII., Rules 18, 19, 20, and 26			
Order XXI., Rule 10 (other than an order made by the judge on the return day)			
Order XXII., Rule 16 (*c*)			
Order XXV., Rules 12, 18, 24, and 61			
Order XXVI., Rule 16			
Order XXVII., Rule 18			
Order XXXIII., Rules 12 and 18			
Order XLII., Rule 10			
Order LIV., Rules 11 and 12			

Provided that if the Schedule (A.) fee paid on the issuing of the plaint did not amount to 4*s*., the fee for such order shall not exceed the amount of such plaint fee.

11. For drawing, sealing, and issuing every notice or order under Order XVII., Rules 2, 3, and 4, or Order XXV., Rules 14 and 15, and altering the minute book ... 0 4 0

Provided that if the Schedule (A.) fee paid on the issuing of the plaint did not amount to 4*s*., the fee for such notice or order shall not exceed the amount of such plaint fee.

If such notice or order affects more actions or matters than one, or more persons than one, then for each person more than one on whom such notice or order is required to be served, an additional fee of 0 1 0

Digitized by Google

	£	s.	d.
12. For drawing, sealing, and issuing every order on an interlocutory application made under Order XII., Rule 11, pursuant to any statute other than the Act or any Act mentioned in this Schedule, where no other fee is prescribed for such order, including copy for service...	0	4	0
13. For drawing, sealing, and issuing every special judgment or order, where the court exercises jurisdiction under the Supreme Court of Judicature Act, 1873, including copy for service	0	15	0
14. For every sitting before the registrar under— Order XII., Rule 4 ... ... / Order XVIII., Rules 18, 19, and 25 ... ... / Order XXV., Rules 5 and 71...	0	10	0
15. Where the sitting is longer than one hour, for every additional hour or part of an hour	0	7	0
16. Where the registrar is required to attend elsewhere than at the court or office (in addition to the above) ...	0	10	0
17. Mileage one way, each mile	0	0	6
18. For every notice, receipt, or summons under— Order X., Rule 4 ... ... / Order XVI., Rule 28 ... ... / Order XXI. (other than a notice under Rule 8) ... / Order XXII., Rule 18 (except where a fee is payable under Order XIV., Rule 11) ... ... / Order XXV., Rules 58 and 59	0	2	6
19. For issuing every warrant of attachment	0	2	0
20. For every application under Order XXV., Rule 62 or Rule 68	0	10	0
21. For every order for substituted service, or service out of England and Wales, under Order VII., Rule 40 or Rules 41 and 44—			
Where the claim does not exceed 40*s*.	0	1	0
Where the claim exceeds 40*s*.	0	2	0
For every notice under Order VII., Rule 46 or Rule 47	0	2	6
22. For auditing receiver's accounts in any action or matter—			
Where the sum in the account does not exceed 100*l*.	0	5	0
For every additional 50*l*. or fraction thereof ...	0	2	6

Digitized by Google

	£	s.	d.
23. For drawing, sealing, and filing every order under the Ballot Act, 1872, and Order L., Rule 5, including copy for service	0	10	0
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
24. On proceedings under the Agricultural Holdings (England) Acts, 1883 to 1900, or the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and Order XL.—			
On every application for the appointment or change of a guardian under Order XL., Rule 1, including drawing, sealing, and issuing the order on such application	0	5	0
For filing every application or special case under Order XL., Rule 2 (1, 2), Rule 3 (2), or Rule 7 (1)	0	2	6
For every order for short service under Order XL., Rule 2 (3) or Rule 7 (4), including copy for service	0	2	6
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4
For every notice under Order XL., Rule 3 (3), to be paid by the party filing the case, or on whose application the case is stated	0	2	6
For every notice under Order XL., Rule 4 (7), to be paid by the applicant	0	2	6
For filing every affidavit under Order XL., Rule 2 (4), Rule 4 (12), or Rule 7 (4)	0	1	0
Where hearing takes place at another court under Order XL., Rule 4 (16), to the registrar of such other court, for his duties under that rule ...	0	10	0
For settling, sealing, and filing every order under the following rules or any of them, including copy for service:—			
Order XL., Rule 2 (6) ... ... Order XL., Rule 3 (5), to be paid by the party filing the case, or on whose application the case is stated ... ... Order XL., Rule 4 (15) ... ... Order XL., Rule 7 (5)	0	5	0
If more than one copy of such order to be served, for each additional copy, per folio	0	0	4

Digitized by Google

	£	s.	d.
For every notice under Order XL., Rule 5 (2), to be paid by the applicant	0	2	6
For every taxation of costs of an arbitration and award, including certificates of result of taxation, where the amount of the account to be taxed does not exceed 50*l.*	0	10	0
And for every additional 50*l.* or fractional part of 50*l.*	0	10	0
For every taxation of costs on an application for the removal of an arbitrator, or to set aside an award...	0	5	0

25. On proceedings under the Employers' Liability Act, 1880, and Order XLIV.—

For forwarding copy of application for assessors, Order XLIV., Rule 7	0	2	6
For every summons to an assessor (other than an assessor appointed by the judge under Order XLIV., Rule 11), to be paid by the party nominating such assessor...	0	2	6
For every taxation of costs—			
Where the sum recovered (or, in case of a defendant, the sum claimed) does not exceed 100*l.*	0	7	0
Where such sum exceeds 100*l.*	0	10	0

26. On proceedings under the Workmen's Compensation Acts, 1897 and 1900, and the Workmen's Compensation Rules, 1898 to 1900:—

For every order under the following rules or any of them—			
Rule 46 (*b*), on an application to the judge at a date subsequent to the arbitration			
Rule 47 (*e*) (other than an order for execution to issue)	0	4	0
Rule 50, on an application after award made, or memorandum or certificate recorded			
For preparing every certificate under section 1, sub-section 4	0	2	0
For examining every affidavit in support of an application for issue of execution	0	1	6
For every investment made by a registrar (to be deducted from the sum ordered to be invested)..	0	2	6

Digitized by Google

	£	s.	d.
For every taxation of costs of an award	0	10	0
For every other taxation of costs	0	5	0
For every office copy or certified copy of documents filed or records made in reference to any matter, per folio	0	0	4
For every sitting under Rule 58, the same fee as for a sitting under Order XXV., Rule 71.			
27. Where the Court exercises its powers under the Money Lenders Act, 1900, section 1:—			
For every sitting before the registrar to take accounts, for every hour or part of an hour...	0	5	0
For settling, sealing, and issuing every order containing special directions by the judge, including copy for service	0	5	0
28. For copies of every proceeding or document under Order II., Rule 7 (not being a certified copy of a judgment or order according to Form 155), per folio	0	0	4
29. Taxing costs in any action or matter not hereinbefore mentioned—			
Where the amount recovered (or, in the case of a defendant, the amount claimed) exceeds 50*l.* but does not exceed 100*l.*	0	7	0
Where such amount exceeds 100*l.*	0	10	0
30. Taxing costs between solicitor and client, under section 118 of the Act, and Order LIII., Rule 46—			
Where the amount of the account to be taxed does not exceed 25*l.*	0	5	0
And for every additional 25*l.*, or fractional part of 25*l.*, an additional fee of	0	5	0
31. For every bond with sureties	0	5	0
32. For making a return to a writ of certiorari, for costs out of pocket	0	15	0
33. For issuing duplicate plaint note, warrant, order, or any document issued by the Court, under Order VII., Rule 1, or Order LIV., Rule 26	0	0	6
Where any such plaint note refers to more than 10 actions, for every 10 actions or fractional number above 10	0	0	6

Digitized by Google

High Bailiff's Fees.

	£	s.	d.
34. For every default summons to be served by a bailiff ...	0	1	0
And where there are more defendants than one, for each defendant to be served by a bailiff	0	1	0

35. For keeping possession of goods till sale on any process of execution, or any warrant of delivery under Order XXV., Rule 69, per day (including expenses of removal, storage of goods, and all other expenses), not exceeding seven days, sixpence in the pound on the value of the goods seized, to be fixed by appraisement in case of dispute, *so that the total fee does not exceed* 10*s. per day;* and, in addition, for feeding animals, the actual cost thereof.

36. Where possession is kept after the seventh day, at the written request of both parties, the fees and cost allowed under the preceding paragraph may be allowed for a reasonable further time in respect of such possession against the debtor or his estate.

37. For keeping possession of goods in an interpleader proceeding after the seventh day, and for taking charge of and feeding animals, in addition to the possession fees and cost as above on execution of warrant, costs out of pocket to be allowed by the judge.

38. For keeping possession of goods in an interpleader proceeding transferred from the High Court under Order XXXIII., Rules 13 and 15, such reasonable charges, not exceeding those which might be made by the sheriff, as the judge may order; and for appraisement (if required) and sale, the same charges as are allowed on a sale under an execution issued by a county court.

39. For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act, 1883, in addition to the fees allowed to the broker by section 154 of the Act, the sum actually and necessarily paid.

40. When no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding 1*s.* in the pound on the value of the goods seized, if such value does not

Digitized by Google

£ s. d.

exceed ten pounds, and 8*d.* in the pound on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and, in addition, any sum actually and necessarily paid for advertising under the last preceding paragraph.

41. For service of every judgment summons issued on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Acts, 1897 and 1900, a fee equal to that charged under Schedule (A.) on the issue of a judgment summons for the like amount on a judgment order of a county court, *so that the total fee does not exceed 5s.*

42. For executing every warrant, order of commitment, precept, or writ issued from or on a judgment or order of a court other than a county court, or on an award, memorandum, or certificate under the Workmen's Compensation Acts, 1897 and 1900, or the Workmen's Compensation Rules, 1898 to 1900, 1*s.* in the pound on the amount for which it issues, if such amount does not exceed ten pounds, and 8*d.* in the pound on any excess above ten pounds, *so that the total fee does not exceed* 16*s.* 8*d.*; and for keeping possession, appraisement, advertising, and sale, or for inventory, appraisement, cataloguing, lotting, and preparing for sale, and advertising, where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment or order of a county court.

43. For executing any order for the detention, preservation, or interim custody, or for taking possession of any property or thing under Order II., Rules 38 to 40, or Order XII., Rules 1 to 8, or Order XXVII., Rule 13, the same fees as for keeping possession of goods on a process of execution, not exceeding seven days, and after the seventh day costs out of pocket to be allowed by the judge; and for appraisement (if required), advertising, and sale, the same allowances as on a warrant of execution on a judgment of the court.

44. For delivering the goods on completion of a replevin bond 1 1 0

Together with 6*d.* a mile from the court house to the place where the goods are.

Digitized by Google

	£	s.	d.
45. For service (including proof of service) of any notice under Order XXV., Rule 58 or 59, or any order authorising the issue of a warrant of attachment ...	0	2	6
46. For executing any warrant of attachment	0	10	0
47. For affidavit of service of an order for the recovery or for the delivery of the possession of land, and of disobedience thereto, Order XXV., Rule 68	0	2	6

PART II.

Fees in Equitable Actions or Matters only, unless otherwise mentioned.	Where the Subject-matter of the Action or Matter					
	Does not exceed 100*l.*			Exceeds 100*l.*		
Registrar's Fees.	£	*s.*	*d.*	£	*s.*	*d.*
1. For duties to be performed under Order XXXVIII., Rules 9 to 23 inclusive, to be charged once only in the matter ...	0	10	0	0	15	0
2. On transfer of proceedings from the Chancery or Probate Division of the High Court of Justice, or of interpleader proceedings under the Supreme Court of Judicature Act, 1884; for perusing and filing papers, application to judge, drawing directions to proceed, and notice to parties	1	1	0	1	1	0
3. For attesting admission of defendant and filing, Order IX., Rule 5	0	3	6	0	5	0
4. For filing statement of defendant, or notice by plaintiff of discontinuance of action, Order IX., Rules 1 and 5.	0	2	6	0	4	0
5. For settling draft order on an ex parte or interlocutory application, and the order as made, Order XII., Rules 5, 6, 7, and 8	0	10	0	0	15	0
6. For drawing and filing order of transfer, under Order XXXIII., Rule 5, and transmitting order and papers	0	10	0	0	15	0
7. For drawing, filing, and sealing every special order or judgment (other than orders obtained ex parte or on interlocutory applications under Order XII.), and every final order, including copy for service	0	15	0	1	5	0

Digitized by Google

Fees in Equitable Actions or Matters only, unless otherwise mentioned.	Where the Subject-matter of the Action or Matter					
	Does not exceed 100*l.*			Exceeds 100*l.*		
	£	s.	d.	£	s.	d.
8. If more than one copy of such order or judgment to be issued, for each additional copy, per folio	0	0	4	0	0	4
9. For every order for further directions under Order XXIV., Rule 37	0	7	0	0	12	0
10. For filing or recording every order by judge for adjournment	0	2	6	0	4	0
11. For drawing advertisements and inserting	0	5	0	0	7	0
12. For every sitting on which the registrar is employed in settling conditions and contracts or fixing reserved biddings, or in taking accounts, making inquiries or acting as a special examiner under Order XXIII., Rule 18, or Order XXIV., Rules 1 and 2, or Order XVIII., Rules 18, 19, and 25	0	10	0	0	10	0
13. Where the sitting is longer than one hour, then for every additional hour or part thereof	0	7	0	0	7	0
14. Where the registrar is required to attend elsewhere than at the court or office (in addition to the above)	0	10	0	1	0	0
15. Mileage one way, each mile	0	0	6	0	0	6
16. For certificate under Order XXIV., Rule 27	0	15	0	1	10	0
17. For making and transmitting note of order under Order XXXVI., Rule 2 ...	0	2	6	0	3	6
18. For every inspection of certificate, Order XXIV., Rule 31	0	1	0	0	2	0
19. For filing and sealing every affidavit or other document, not being a document annexed to an affidavit, or a document for which a fee is herein provided ...	0	1	0	0	1	0
20. For every application for a search and searching	0	2	0	0	2	0
21. For issuing every warrant	0	2	0	0	3	0
22. For giving every notice required by any order, except as hereafter mentioned ...	0	2	0	0	2	6
23. Where the notices are given under Order III., Rules 27 and 28	0	3	0	0	5	0
24. For every office copy, per folio	0	0	4	0	0	4
25. For every taxation of costs other than a taxation under Order XXXVIII., Rule 11	0	7	0	0	10	0
26. For every bond with sureties	0	5	0	0	7	6

Digitized by Google

Fees in Equitable Actions or Matters only, unless otherwise mentioned.	Where the Subject-matter of the Action or matter	
	Does not exceed 100*l.*	Exceeds 100*l.*
	£ s. d.	£ s. d.
27. For every summons under Order XXIV., Rule 2	0 1 6	0 1 6
28. Where hearing takes place at another court under Order XXXIII., Rule 13, to the registrar of such other court for his duties under that rule	0 10 0	0 15 0
High Bailiff's Fees.		
29. For service within home district of every summons, petition, subpœna, notice, judgment, or order not being a summons for commitment or a summons to a juror—		
If within one mile of court house ...	0 2 6	0 4 0
If beyond one mile, then for every additional mile or part of a mile ...	0 0 6	0 0 6
30. For service of every summons, petition, subpœna, notice, judgment, or order (except as aforesaid), in a foreign district, each person to be served ...	0 4 0	0 5 0
31. Where service is ordered to be personal, then an additional fee of	0 2 6	0 2 6
32. For the execution of each warrant within home district	0 7 6	0 10 0
With an allowance of mileage, double the amount of the allowance on summonses.		
33. For the execution of each warrant in a foreign district	0 10 0	0 15 0
34. For keeping possession under a warrant of execution, advertising, appraisement, and sale, or for inventory, appraisement, cataloguing, lotting, and preparing for sale, and advertising, where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant issued by the court in the exercise of its ordinary jurisdiction		
35. Superintending sale, whether by auction or private contract, under Order II., Rule 38, or Order XXIII., Rule 28, making out account, and paying money into court, 2*l.* per cent. on first 50*l.* so paid, and 1*l.* per cent. on all afterwards.		

Digitized by Google

N.B.—The fees in equitable actions or matters shall be payable in actions or matters under sections 67, 68, 69, 70, and 71 of the Act; the Succession Duty Act, 1853, section 50; the Court of Probate Acts, 1857 and 1858; the Partition Acts, 1868 and 1876; the Solicitors Act, 1870; the Local Loans Act, 1875, sections 12 and 25; the Commons Act, 1876, section 80; the Rivers Pollution Prevention Acts, 1876 and 1893; the Sale of Exhausted Parish Lands Act, 1876; the Married Women's Property Act, 1882, section 11; the Settled Lands Act, 1882 to 1890; the Judicature Act, 1884, section 17; the Guardianship of Infants Act, 1886; the Lunacy Act, 1890, sections 132 and 300; the Open Spaces Act, 1890; the Trustee Act, 1893; the Finance Act, 1894, section 10; the London Buildings Act, 1894, section 196; the Judicial Trustees Act, 1896 (but subject to the provisions of the Judicial Trustee Rules, 1897); and the Inebriates Act, 1898, section 12; but such fees shall not be payable in proceedings in which the Court exercises its powers under the Money-lenders Act, 1900, section 1.

Subject to the provisions of Order XIII., Rule 14, an application for the appointment of a receiver by way of equitable execution shall for the purposes of fees be treated as an interlocutory application in an equitable action or matter.

Where the amount or value of the subject-matter of the action or matter is not disclosed by the plaint or petition, it shall be taken not to exceed 100*l*., and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l*., the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l*. may then be taken.

PART III.

Fees in Admiralty Actions.	Where the Amount claimed					
	Does not exceed 100*l*.			Exceeds 100*l*.		
Registrar's Fees.	£	s.	d.	£	s.	d.
1. On every warrant of arrest of a vessel or property	0	5	0	0	7	6
2. On every order of release	0	5	0	0	7	6
3. „ bail bond...	0	5	0	0	7	6
4. „ affidavit of justification ...	0	2	6	0	2	6
5. „ subpœna or summons to a witness	0	2	0	0	3	0
6. On every notice of hearing or rehearing each	0	1	6	0	2	6

Digitized by Google

Fees in Admiralty Actions.	Where the Amount claimed					
	Does not exceed 100*l.*			Exceeds 100*l.*		
	£	s.	d.	£	s.	d.
7. Summons for the attendance of an assessor at the hearing of any action or reference ... ... each	0	1	6	0	2	6
8. For every order of transfer of action or sale or order for consolidation of actions ...	0	10	0	0	15	0
9. Where a special court is to be held for the trial of the action	1	5	0	1	15	0
10. Where the court is to sit for the hearing or part hearing of an action beyond three miles from registrar's office, then in addition	0	15	0	0	15	0
11. Mileage one way from office to place of sitting, for each mile	0	0	6	0	0	6
12. When the registrar cannot return the same night	1	1	0	1	1	0
13. For drawing final judgment	0	10	0	0	15	0
14. For filing every affidavit or other document, not being a document annexed to an affidavit	0	1	0	0	1	0
15. For every office copy of a document in the English language ... per folio	0	0	4	0	0	4
16. For office copies of papers in a foreign language, or of shorthand writers' or reporters' notes, or of abstracts or translations made in the office, in addition to the above fees, the charges of the copyist, shorthand writer, reporter, or translator	—			—		
17. On a receipt for money or for papers (*only one fee to be taken, however many may be the papers delivered in at one time*)	0	1	0	0	1	0
18. For inspecting any preliminary act, or from a person who is not a party in the action, nor his solicitor, nor the clerk of the solicitor, on examining the court books in respect of any action	0	1	0	0	1	0
19. For every summons for commitment ...	0	8	0	0	5	0
20. For every warrant of execution against goods, order of commitment, or order for appraisement or sale of vessel or property, or warrant of execution against vessel or property	0	5	0	0	7	6
21. On examining the documents in any action in which no proceedings are pending, and which has been terminated within the last two years	0	2	6	0	2	6
22. Ditto ditto, if beyond that period ...	0	3	6	0	3	6

Digitized by Google

Fees in Admiralty Actions.	Where the Amount claimed					
	Does not exceed 100*l.*			Exceeds 100*l.*		
	£	s.	d.	£	s.	d.
23. For every sitting in which the registrar is employed as an examiner on the cross-examination of sureties, or on a reference, or for the assessment of damages, where the amount claimed exceeds £20	0	7	0	0	10	0
24. When the sitting is longer than one hour, then for every additional hour or part of an hour...	0	5	0	0	7	0
25. Where the registrar shall be required to attend elsewhere than at the court or office (in addition to the above) ...	0	10	0	1	0	0
26. Mileage one way from the office to the place of sitting, for each mile	0	0	6	0	0	6
27. For report under Order XXXIX., Rule 101	0	10	0	0	15	0
28. For making and transmitting note of judgment or order under Order XXXVI., Rule 2	0	2	6	0	3	6
29. For every notice under Order XXXIX., Rules 57 or 59	0	3	0	0	5	0
30. For every order for substituted service under Order XXXIX., Rules 15, 18, or 60	0	2	0	0	3	0
31. For every order directing notice of judgment or order to be given under Order XXXIX., Rule 61	0	3	0	0	5	0
32. For drawing advertisements and inserting	0	5	0	0	7	0
33. For taxation of costs	0	5	0	0	7	0
High Bailiff's Fees.						
34. For service of every summons, subpœna, judgment order, or notice	0	2	6	0	4	0
And reasonable expenses for travelling and maintenance		—			—	
35. Where service is ordered to be personal, then an additional fee of	0	2	6	0	2	6
36. Attendance at special court, if required by judge	0	7	6	0	15	0
37. For execution of warrant of arrest of vessel or property	0	15	0	1	0	0
And reasonable expenses for travelling and maintenance		—			—	
38. For keeping possession of vessel or property under warrant of arrest, to include the cost of a vessel-keeper, if required, per day	0	5	0	0	5	0
39. For service of summons for commitment	0	4	0	0	8	0
40. For execution of order of commitment ...	1	0	0	1	10	0

Digitized by Google

Fees in Admiralty Actions.	Where the Amount claimed	
	Does not exceed 100*l.*	Exceeds 100*l.*
	£ s. d.	£ s. d.
41. For execution of warrant of execution against goods in action *in personam*, or against the goods of parties giving bail and their sureties in action *in rem* [Form 408]	1 0 0	1 10 0
42. And for keeping possession, appraisement, advertising, and sale, or for inventory, appraisement, cataloguing, lotting and preparing for sale, and advertising, where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, the same allowances as under a warrant of execution on a judgment of the court given in the exercise of its ordinary jurisdiction.		
43. For execution of warrant of execution against vessel or property in action *in rem* [Form 412]	1 0 0	1 10 0
[Less, where vessel or property is already under arrest, the fee for execution of warrant of arrest;]		
And reasonable expenses for travelling and maintenance	—	—
44. For keeping possession of vessel or property under such warrant, to include the cost of a vessel-keeper, if required, per day	0 5 0	0 5 0
45. On sale of vessel or property [in addition to appraiser's and auctioneer's charges] for every 50*l.* or fraction thereof of the gross proceeds of sale	0 10 0	0 10 0
46. Appraiser's and auctioneer's fees in action *in rem*:		
(*a.*) For inventory and appraisement only, without sale—		
If the appraised value does not exceed 500*l.*, for every 100*l.* or fraction of 100*l.*	1 0 0	1 0 0
If the appraised value exceeds 500*l.*, for the first 500*l.*, per cent.	1 0 0	1 0 0
For each subsequent 100*l.* or fraction of 100*l.*	0 10 0	0 10 0
(*b.*) Where sale takes place—		
For inventory and appraisement, for every 100*l.* of the appraised value, or fraction of 100*l.*	0 10 0	0 10 0

Digitized by Google

Fees in Admiralty Actions.	Where the Amount claimed	
	Does not exceed 100*l.*	Exceeds 100*l.*
	£ s. d.	£ s. d.
For sale, for every 100*l.* or fraction of 100*l.* of the gross proceeds of sale Together with the actual cost of printing, advertising, and hire of sale room. And, in either case, a reasonable sum for travelling expenses and maintenance.	1 0 0	1 0 0
(*c*) Where no sale takes place by reason of an execution being withdrawn, satisfied, or stopped, there may be allowed the full fees under (*a*) for inventory and appraisement [if actually made] and all charges actually and necessarily incurred for printing, advertising, and preparing for sale, and for travelling expenses and maintenance as aforesaid.		

N.B.—The fees in Admiralty actions shall be payable in actions under the County Courts Admiralty Jurisdiction Acts, 1868 and 1869, and in proceedings which under the Merchant Shipping Act, 1894, or any other Act of Parliament may be taken as Admiralty proceedings in any court having Admiralty jurisdiction by virtue of the said County Courts Admiralty Jurisdiction Acts, 1868 and 1869.

Where the amount or value of the subject-matter of the action is not disclosed by the plaint, it shall be taken not to exceed 100*l.*, and the fees charged accordingly. If, however, the judge shall subsequently certify that the amount or value of the subject-matter does exceed 100*l.*, the difference between the fees up to that time taken and those that would have been taken had it exceeded 100*l.* may then be taken.

Part IV.

Fees in other Proceedings.

Registrar's Fees.

	£ s. d.
1. Protection of property of deserted married women, 20 & 21 Vict., c. 85, s. 21— For sealing every order brought to a registrar, entering same and transmitting sealed copy of entry to registrar of county court judgments	0 5 0

Digitized by Google

	£	s.	d.
2. Grant of a certificate of judgment under the Inferior Courts Judgments Extension Act, 1882	0	2	6
3. Presentation of such last-mentioned certificate for registration	0	2	6
4. Sealing and issuing duplicate of such certificate... ...	0	1	0

Registrar's and High Bailiff's Fees.

5. In proceedings under the Companies Act, 1867, section 11, the Companies (Memorandum of Association) Act, 1890, or the Companies Act, 1898, the registrar shall be allowed to retain as remuneration for the duties performed by him one-half of the fees taken by him in respect of such proceedings, except in respect of office copies, in which case he shall be allowed to retain the whole of the fees taken in respect thereof; and the high bailiff shall be allowed the same fees for the duties performed by him as in proceedings under the Companies (Winding-up) Act, 1890.

For taxation of accounts and examination of claims under sections 4 and 5 of the Parliamentary Elections (Returning Officers) Act, 1875, or any Act applying the said Act, or any other Act providing for the taxation by the court of costs of elections :—

Registrar's Fees.

6. For every notice under Order XLIII., Rules 2 and 4 ...	0	2	6
7. For taxation :—			
Where the amount of the account to be taxed does not exceed 50*l.*	0	10	0
And for every additional 50*l.* or ractional part of 50*l.* an additional fee of...	0	10	0
8. For examination of claim, 1*s.* in the pound on the amount of such claim, so that the total fee does not exceed	0	10	0

High Bailiff's Fees.

9. For service of every notice under Order XLIII., Rules 2 and 4—			
Within one mile of registrar's office	0	2	6
Beyond one mile, for every additional mile or part of a mile	0	0	6

Digitized by Google

APPENDIX L

WORKMEN'S COMPENSATION ACT, 1897.

(Repealed by the Workmen's Compensation Act, 1906.)

[60 AND 61 VICT. C. 37.]

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment. [6th August, 1897.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Liability of certain employers to workmen for injuries.

1.—(1) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that:—

(*a.*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed.

(*b.*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

(*c.*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

Digitized by Google

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

Time for taking proceedings.

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

Digitized by Google

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body.

Contracting.

8.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the pro-

Digitized by Google

visions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the registrar under this Act.

Sub-contracting.

4. Where, in an employment to which this Act applies, the undertakers as herein-after defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

Compensation to workmen in case of bankruptcy of employer.

5.—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be

Digitized by Google

wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

Recovery of damages from stranger.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

Application of Act and definitions.

7.—(1.) This Act shall apply only to employment by the undertakers as herein-after defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as herein-after defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896: 36 & 37 Vict. c. 48. 59 & 60 Vict. c. 48.

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power: 58 & 59 Vict. c. 37.

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies: 50 & 51 Vict. c. 58. 35 & 36 Vict. c. 77.

"Quarry" means a quarry under the Quarries Act, 1894: 57 & 58 Vict. c. 42.

Digitized by Google

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:

"Dependants" means—

9 & 10 Vict. c. 93.

(*a*) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

(*b*) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(8.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

Digitized by Google

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person. Application to workmen in employment of Crown.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act. 50 & 51 Vict. c. 67.

9. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine notice of the determination thereof were given at the commencement of this Act. Provision as to existing contracts

10.—(1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight. Commencement of Act and short title.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

Scale.

(1.) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings

Digitized by Google

at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the

Digitized by Google

Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or

Digitized by Google

on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

59 & 60 Vict. c. 25.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

40 & 41 Vict. c. 56.

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

Arbitration.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

(1.) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

Digitized by Google

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court. 52 & 53 Vict. c. 49.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a Judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the

Digitized by Google

county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

51 & 52 Vict. c. 43.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this schedule to Scotland—

(*a.*) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court":

(*b.*) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of

Digitized by Google

council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral:

(*o.*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced. 39 & 40 Vict. c. 70.

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

Digitized by Google

APPENDIX M

Workmen's Compensation Act, 1900.

(Repealed by the Workmen's Compensation Act, 1906.,

[63 & 64 Vict. C. 22.]

An Act to extend the benefits of the Workmen's Compensation Act, 1897, to Workmen in Agriculture.

[30th July, 1900.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Application of 60 & 61 Vict. c. 37. to agricultural work.

1.—(1.) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2.) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workman employed in such work as if that employer were an undertaker within the meaning of that Act.

Provided that, where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

(3.) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workman in such other work.

The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables,

Short title.

2. This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

Commencement of Act.

3. This Act shall come into operation on the first day of July one thousand nine hundred and one.

Digitized by Google

APPENDIX N

Employers' Liability Act, 1880.

[43 & 44 Vict. C. 42.]

An Act to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service. [7th September, 1880.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

1. Where after the commencement of this Act personal injury is caused to a workman Amendment of law.

(1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or byelaws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway,

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

Digitized by Google

Exceptions to amendment of law.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,

(1.) Under sub-section one of section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2.) Under sub-section four of section one, unless the injury resulted from some impropriety or defect in the rules, byelaws, or instructions therein mentioned; provided that where a rule or byelaw has been approved or has been accepted as a proper rule or byelaw by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or byelaw.

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Limit of sum recoverable as compensation.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Limit of time for recovery of compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always, that in the case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

Money payable under penalty to be deducted from compensation under Act.

5. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such work-

Digitized by Google

men, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workmen, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Trial of actions.

6.—(1) Every action for recovery of compensation under this Act shall be brought in a county court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a county court may by law be removed.

(2.) Upon the trial of any such action in a county court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a county court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in county courts.

"County court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean the "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions prescribed by, section nine of the Sheriff Courts (Scotland) Act, 1877.

40 & 41 Vict. c. 50.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

Mode of serving notice of injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

Digitized by Google

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Definitions.

8. For the purposes of this Act, unless the context otherwise requires,—

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:

The expression "employer" includes a body of persons corporate or unincorporate:

38 & 39 Vict. c. 90.

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

Commencement of Act.

9. This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

Short title.

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next Session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

Digitized by Google

INDEX

"ABLE to earn," meaning of, 211
"About premises," meaning of, 120–122
Absence from United Kingdom—
  Accident happening during, 101
  Neglect to give notice because of, 96
  Neglect to make claim because of, 101
  And *see* Workman residing abroad
Accident, 48–54
  Anthrax may be, 58
  Beat hand and beat knee are not, 54
  Blood-poisoning, how far, 50
  Cases on, considered, 48–54
  Date of, 55
  Definition of, 48
  Disease, how far, 48, 52
  Enteritis, 58
  Fortuitous event, 51
  Fright, 49
  Gradual infection, 58
  Heat stroke, 54
  Lead-poisoning, 50
  Notice of, *see* Notice
  Strain, 50
Actio personalis moritur cum persona, 182
Action—
  Against employer, 28, 71–75
  Against stranger, 24, 128–182
  Agreement not enforceable by, 84
  Option to bring, 71
  Unsuccessful, award of compensation after, 84–88
Admission of liability, procedure where there is, 284–286, 362
Administration, letters of, need not be taken out, 260
Agreement to pay compensation—
  What is, 83, 84
  When to be registered, 247–255
  And *see* Memorandum

Digitized by Google

Agricultural work—
Employment in, under Workmen's Compensation Act, 1900, 18
Meaning of, 117
Proviso as to, in sec. 4, 112
Amount of compensation—
See Compensation *and* Weekly payment
"Ancillary to," 115
Annuity to be purchased in Savings Bank, 219
On redemption of weekly payment, 229, 230
Answer to application for arbitration, 283, 359–362
Anthrax may be an accident, 53
Appeal to Court of Appeal, 85, 238–243
Difference from provisions of old Act, 239
From decision of judge on question of law, 239
From decision or order, 240
Procedure on, 240, 318
Request to assess compensation, effect of, on right to, 242
Security for costs on, 241
Appeal to Divisional Court, no longer possible, 240
Appeal to House of Lords, 241
In Ireland, 266
In Scotland, 265
Procedure on, 241
Appearance in arbitration, by whom to be made, 244, 293
Application for arbitration—
Forms of, 327–356
Proceedings on, 291, 292
Apprentice—
Is a workman, 167, 174
And *see* Seamen
Arbitration, 83–86, 235–247
By arbitrator agreed on by parties, 236
By arbitrator appointed by judge, 237
By committee, 235
By county court judge, 237
Costs of, 244–246
Parties to, before judge, 278, 279
Procedure on, 288
What questions settled by, 84, 88
Who may appear in, 243, 244, 293
Arbitration Act, 1889, does not apply to this Act, 238
Arbitrator agreed on by parties, 236
Has no special powers, 237
Rules do not govern, 237
Arbitrator appointed by judge, 158, 237
Application for, procedure on, 279–281
Forms of, 327–357

Digitized by Google

Arbitrator appointed by judge, *continued*—
Can state case, 288
England, can only be appointed in, 287
Is governed by rules, 288
New, may be appointed by judge, 246
Powers of, 287
Remuneration of, 158
"Arising out of, and in course of, employment," 55–68
Action in emergency, 63
Breach of regulations, 65
Burden of proof, 65
Cases on, 55–68
Commencement of work, 56–60
Disobedience to orders, 67
Going to or from work, 56–62
Horseplay amongst workmen, 66
Lightning, death by, 67
Nature of act to which injury due, 62–68
"Out of" and "in course of" are separate points, 65
Premises of employer, 55
Risks incidental to employment, 66
Time and place where accident occurs, 56–62
Tort of stranger, 65, 66
Assessment of compensation where action fails, 84–88
By court trying action, 87
Certificate to be given, 88
Form of, 392
Costs, 87
When application for, should be made, 86
Assessor, medical referee may be summoned as, 243
Application for, 304
Form of summons, 393
Authorities, *see* Local authorities
Average weekly earnings, 198–209
Board and lodging may form part of, 208
Break in employment, 202, 208
Concurrent contracts of employment, 199, 207
Do not include sum paid to cover special expenses, 199, 208, 208
Grade in employment, 199, 206
Law as to, under Workmen's Compensation Act, 1897, 200–204
Meaning of, considered by Court of Appeal, 204–207
Rules for determining amount of, 198
Tips may form part of, 208
What manner of gains included in, 208, 208
When accident occurs in first week of employment, 199, 204
Award—
Form of, 370–374

Digitized by Google

Award, *continued*—
How enforceable, 255, 316, 317
Liability declared by, 210, 251
Variation of, 216

Ballot, opinion of workmen as to scheme to be ascertained by, 104, 106, 425
Bankruptcy of employer, 123–127
Alteration from old law, 125
Effect of, 125, 126
Exclusion of rules of bankruptcy in, 123
Priority of workmen, 123
Proceedings against insurers on, 294
Rights of employer against insurers, 125
Rights of workmen against insurers on, 126
Beat hand and beat knee, how far accidents, 54
Benefits outside Act to be considered in fixing compensation, 209–212
Benefits to workmen under scheme, 106
Blood-poisoning, how far accident, 50
Board and lodging may form part of average weekly earnings, 208
Break in employment—
Effect of, 202, 208
What amounts to, 202
"British ship," definition of, 137
Burial expenses—
Of seaman, 134, 140
And *see* Funeral expenses
Bus conductor—
Position of, under former Act, 16, 175
under this Act, 175
Business—
Meaning of, 115, 171
Work carried on by local authority is, 184

Casual nature, persons in employment of, 169–171
Are not workmen, 167
Except in trades and businesses, 167
Cases on, 169, 170
Definition of, 171
Employment of charwoman, 169
Employment of window cleaner, 170
Trade or business, meaning of, 115, 171
Workman regularly employed in, 170
Certificate, under sec. 1, subsec 4, 85, 88
Form of, 392
Has force of an award, 85
To be given when compensation assessed on trial of action, 85

Digitized by Google

Certificate, *continued*—
By medical referee, 222, 231
Form of, 392
Rules as to, 304
By certifying surgeon, 143, 150
And *see* Scheme
Certifying surgeon, appeal to medical referee from, 149
Appointment of, 144
Certificate by, of industrial disease, 143
Duties of, 40, 151
Medical practitioner may be appointed to act as, 152
Regulations as to duties of, 435–452
Remuneration of, 436
Charwoman, position of, 169
Chief Registrar of Friendly Societies, *see* Scheme
Children—
Illegitimate, 177, 182
Are dependants, 177
Position under old law, 182
Neglect of, 216–219
Court may vary order in cases of, 216
Posthumous, 181
Claim for compensation, 91, 97–108
Absence from United Kingdom, effect of, on, 101
Application for arbitration is, 97
Cases on, 97–101
Effect of defect in, 100
Failure to make, 101–108
Form of, 97
Need not be in writing, 97
When to be made, 91, 97
Coal mines, breach of regulations of, 77, 80
Coal Mines Regulation Act, 89
Committee, 88, 235
Either party may object to, 235
Home Secretary may confer special powers on, 262
How constituted, 236
May refer matter to medical referee, 236
May submit question of law to judge, 236, 292
Must be representative of employer and workman, 236
Must proceed within six months, 236
Must send memorandum of award, 236, 247
"Common employment," meaning of, 14
Common law, position of workmen under, 18
Compensation, 29, 191–198
Amount payable to partial dependants, 29, 194
Amount payable to total dependants, 29, 192

Digitized by Google

Compensation, *continued*—
Amount payable where no dependants, 30, 195
Amount payable during incapacity, 26, 195–198
Amount payable to workman under twenty-one years of age, 26, 198
Application of, power of court to vary, 216
Assignment of, 282
Benefits outside Act to be considered, 27, 209
In lieu of, not in addition to, wages, 68
Investment of, 218, 219
On bankruptcy of employer, 123–127
Payment into court of, 218
Redemption of, 27, 229–231
Returns as to, 164, 469
Review of award of, 27, 225–229
Right of solicitor to deduct costs from, 260, 261, 314
To whom paid, 260
Where as much earned after as before accident, 69–71, 251
Concurrent contracts of service, 199, 207
Effect of, in determining average weekly earnings, 207
Consular officers, duties of, under Act, 44, 184
Contracting out of Act, *see* Scheme
Contractor, *see* Sub-contracting *and* Independent contractor
Costs, 244–246
Arbitrator has no power to make successful party pay, 246
Are in discretion of arbitrator, 244
Cannot be set off, 246
County court, scale of, 245, 492–518
Deduction of, from compensation after unsuccessful action, 84
Difference from rules as to, under old Act, 245
Lien of solicitor for, 260, 314
Lump sum may be awarded for, 246
Not to exceed limit prescribed by rules, 244
Offer of compensation to be taken into account in awarding, 246
Rules of court as to, 312
Security for, 241
Taxation of, 245, 261
Procedure on, 245
Review of, by judge, 244
County Court—
In which, proceedings should be taken, 256, 319–321
Where one party resides in Scotland, 257
County court judge, *see* Judge of county court
County Officers and Courts (Ireland) Act, 284
Course of employment, *see* "Arising out of, and in course of, employment"

Digitized by Google

Court Fees—
General scale of, 492–518
Special scale of, 417–420
None payable before award, 258, 259
Except under Sched. I., para. 15, 258
Court of Appeal, *see* Appeal
Crown, persons in service of, 20, 156, 157, 166
Are workmen, 167
Exceptions, 157
Power of Treasury to frame schemes for, 157
Who to be deemed employer of, 156

Death—
Injury must be cause of, 198
Of dependants, effect on right to be compensated, 182
Of employer, effect of, 165
Of workman, *see* Compensation
Payment into Court on, 218
Serious and wilful misconduct is no defence in case of, 76, 81
Dentist, position of, under Act, 151
Dependants, 29, 177–188
Agreement with, to be registered, 247
Amount payable to, 191–195
Cases on, 179–188
Compensation to partial, 194
Compensation to total, 191
Death of, 182
Definition of, 177
Difference from position under old Act, 177
Financial and social position of, not to be considered, 178, 179
Illegitimate children are, 177, 182
Inheritance by, 198
Must depend on earnings, 178
Obligation to support, 180
Partial, 194
Position where both total and partial, 188, 192, 195, 215
Posthumous children are, 181
Presumption that wife is, 178, 180–182
Rights of, not extinguished by payments to workman, 192
Rights of workman and dependants are separate, 227
Total, 192
Voluntary support of relative by, 180
When to be made respondents, 102
Who are, to be settled by arbitration, 215
Is question of fact, 178
Who to take proceedings where several, 102

Digitized by Google

Detention of ships, 160–168
Application for, 160
Circumstances under which application may be made, 162
Form of application for, 375
Forms in proceedings for, 376–388
Persons giving security to be made parties, 162
Procedure for, 162, 295–298
Security may be accepted, 162
Disablement—
Affliction is not, 81
Cessation of, course to be taken on, 69–71
Date of, to be deemed date of accident, 145
Duration of, before case is within Act, 68
In cases of industrial disease, 143
Is question of fact, 69
Serious and permanent, 81
Where permanence doubtful, 82
Disease, *see* Industrial disease
District of county court, 256, 319
Sheriff court has been held to be, 257

Earnings, *see* Average weekly earnings
Election, *see* Option
Emergency, action in, 68
Employer, 165, 166
Action against, 23, 71–75
Application for arbitration by, 102
Crown as, 156
Definition of, 165
Industrial diseases, 146–148
Legal personal representative of, 165
Local authority as, 184
Members of family of, 167, 171
No joint liability on, 166
Of person whose services are lent, 165
"Principal" as, 112–122
Returns to be made by, in certain industries, 164
Forms of, 469–475
List of industries, 469
Any industry in a factory, 470
Business of harbour, dock, &c., 470
Constructional work, 470
Mining, 469
Quarrying, 469
Railways, 469
Shipping, 470
Royal Household, head of department of, as, 156

Digitized by Google

Employers' Liability Act, 1880, 14
Circumstances under which it applies, 15
Defects of, 16
Text of, 533
Who are within its provisions, 15
Employment—
Alteration in nature of, 203
Duration of, 199
"By same employer," meaning of, 208
Grades in, 206
Risks incidental to, 66
What employments are outside Act, 47
And *see* "Arising out of, and in course of, employment"
Examination, *see* Medical examination
Execution, 316, 409–414

Factory and Workshop Act, 89, 144
Family—
Member of, 183
Member of employer's, position of, 167
Fees, *see* Court fees
Fine under Acts relating to mines, factories, and workshops, 88
Fright, may be an "Accident," 49
Forms, *see* Workmen's Compensation Forms
Fortuitous event, is an "accident," 51
Friendly Societies, Chief Registrar of, *see* Scheme
Friendly Societies Act, 233
Funeral Expenses, 21, 195
May be considered in assessing compensation, 195
Where no dependants, persons liable for, may recover, 195

Grade of workman, 198
Meaning of, considered by Court of Appeal, 206
When to be considered in fixing average weekly earnings, 198

Home Secretary, duties of, under Act, 89, 40
Committee, 40, 262
Examination of workmen, 40, 222, 453
Industrial diseases, 89, 151–153, 434, 476
Medical referees, 89, 153
Returns of compensation, 89, 164, 469
Horseplay among workmen, 66

Illegitimate children, 177, 182
In course of employment, *see* "Arising out of, and in course of, employment"

Digitized by Google

Incapacity—
If duration of, less than one week, 22, 68
If duration of, less than two weeks, 26, 197
Must be result of injury, 197
Workman need not undergo operation to be rid of, 197
Indemnity, 118, 128, 147, 162
From stranger to employer, 128
From sub-contractor to principal, 118
Questions as to, to be settled by arbitration, 128
Party from whom sought, how to be brought before court, 290
To person giving security on detention of ship, 162
Where several employers liable under sec. 8, 147
Independent contractor, 172–174
Distinguished from servant, 173
Evidence before Royal Commission, 172
Not within the Act, 172
Industrial disease, 22, 148–155
Accident may be, 144, 155
Application of Act to, 148
Compensation for, how fixed, 148
Contribution by other employers, 146–149
Declaration by workman that he has not suffered from, 145
Deemed due to nature of employment, when, 149–151
Disablement by, date of, 151
Due to nature of employment, how proved to be, 149
Employers, where several, position of, 146–149
Extension of provisions of Act to other diseases, 152, 476
Forms applicable to, 440–452
Insurance against, may be made compulsory, 153
List of, in Sched. III., 267
Further list of, 476
Medical men, duties of, as to—
Forms, in references to, 440–452
Application for reference, 445
Certificate of disablement, 441
Certificate of suspension, 443
Certificate refusing to suspend, 445
Certificate where disease not due to nature of employment, 442
Decision of medical referee, 450
Medical referee's statement of fees, 451
Notice to employer, 450
Notice to workman, 441
Order of reference, 448
Order to workman, 449
Particulars for certifying surgeon, 440
Record of references, 452

Digitized by Google

Industrial disease, *continued*—
Medical men, duties of, as to, *continued*—
Regulations for, references to, 434–440
Certificate of disablement, 435
Fees payable, 436
Reference, 437
Refusal to suspend, 435
Suspension of workman, 435
Where disease not due to nature of employment, 436
Modifications of Act, in cases of, 145–149
Notice of disablement, 149
Onus of proof, 149
Procedure, 298
Provisions where disease is one mentioned in Sched. III., 149
Rules, as to, 298
Amended rules, as to, 479
Suspension of workman from employment because of, 148
To whom notice to be given, 149
Where illness not proved due to nature of employment, 145
Where workman has served several employers, 146
Infant—
Agreement with, to be registered, 247–255
Compensation to, scale of, 198
How far agreement binding on, 84
May exercise option, 75
Review of payments to, 225
And *see* Children
Injury by accident, *see* Accident
Insurance—
Against industrial disease, 153
Home Secretary may compel, in certain industries, 153
In case of bankruptcy of employer, 128–127
Investment in Post Office Savings Bank, 219, 220
Ireland—
Appeal to House of Lords from, 266
Application of Act to, 283, 284
Application of Sched. II. to, 265, 266

Judge of county court, 86–89
Appeal from, 288
Only on question of law, 289
Appeal to—
From arbitrator, 288
From committee, 288
Duties of—
Investment, 87, 219
Medical referees, 86, 243

Digitized by Google

Judge of county court, *continued*—
Duties of, *continued*—
Neglect of children, 86, 216
New arbitrator, 86, 246
Registration of memorandum, 86, 247
Weekly payments, 86, 215
Variation of order, 216
May appoint arbitrator, 286
May settle matters, 287
Must act according to the rules, 288
Question of law decided by, 288

Labour, manual—
Meaning of, 175
Workman engaged in, 16, 175
Legal disability, agreement with persons under, to be registered, 247–255
Payments to persons under, when to be paid into court, 215
Form of payment in, 401
Lien for Costs, *see* Costs
Lightning, workman killed by, 67
Local authority, work of, is "trade or business," 184
Lump sum, 229–231
Agreement for redemption by, may be made out of court, 231
Amount of, 230
Arbitrator may order to be invested, 230
Effect of not registering memorandum of, 257
Investment of, 229, 310
May be awarded for costs, 246
Memorandum of, to be registered, 247–255
Redemption of weekly payments by, 229

Manager of coal mine, position of, 175
"Manager of ship," meaning of, 183
"Manual labour," meaning of, 175
"Master of ship," definition of, 186
And *see* Seaman
Medical examination, 212, 220–225
During payments of compensation, 220, 221
Employer can demand, on claim being made, 212
Form of order to submit to, 398
Medical referee to give certificate, 222
Obstruction of, 213, 221, 307, 399
Suspension of payments pending, 213
Reference of, to medical referee, 222
Regulations as to, 453
Rules as to frequency of, 222, 453

Digitized by Google

Medical examination, *continued*—
Rules of court as to, 805, 807
Where incapacity is admitted, 228
Medical expenses—
If no dependants, person liable for, may recover, 195, 214
Medical practitioner—
Duties of, on examination of workman, 41, 212, 220
Medical referee, 42, 48
Application for reference to, 248, 804
Appointment of, 158
Appointed to report, 262, 805
Assessor may be summoned to sit as, 248
Duties of, 42, 158, 222, 248, 262
Examination of workman by, 222, 228
Regulations as to references to and remuneration of, under sec. 8, *see* Industrial disease
Regulations as to duties of and remuneration of, under Scheds. I. and II., 454
Forms—
Certificate as to condition of workman, 461
Notice to parties, 460
Order to workman, 465
Record of reference, 468
Reference, 468
Statement of fees, 466
Regulations as to Sched. I., para. 15, 456
Regulations as to Sched. I., para. 18, 457
Regulations as to Sched. II., para. 15, 457
Remuneration for sitting as assessor, 457
Report to arbitrator by, 262
Rules of court as to, 804–806
Members of crew of fishing vessel—
Position of, under sec. 7, 135, 142
Member of employer's family, 167, 171
Member of family, 183
Member of police force, 167, 184
Memorandum of agreement to pay compensation, 247–255
Agreement can be subject of, 251
Agreement for redemption of weekly payments, 250, 254
Agreement with person under disability, 250, 254
By whom to be sent, 249
Change from old Act, 249
Circumstances under which judge or registrar may refuse to register, 248, 250
Effect of not registering, 255
Enforceable as county court judgment, if registered, 252
Forms applicable to, 385–391

Digitized by Google

Memorandum of agreement to pay compensation, *continued*—
Not necessary to register, if award registered, 251
Not necessary to register, if matter decided by judge, 249
Register may be rectified, 248, 254
Registrar may refuse to register, 250
Rules of Court, 301–304
Time for registration, 252
To be sent to registrar of county court, 247
Merchant Shipping Act, 1894—
Sec. 174, 141
Sec. 207, 140
Sec. 503, 140
Sec. 691, 139
Sec. 692, 161
Sec. 695, 140
Sec. 742, 138
Metalliferous Mines Regulation Act, 89
Military service, persons in, position of, 156
Misconduct, serious and wilful, 76–82
Accident may not be due to, 80
Being drunk is, 80
Breach of regulations in coal mine, 80
Burden of proof of, 79
Is a defence, 76
Unless death or serious and permanent disablement ensues, 76
Meaning of, 76
Meaning of "wilful," 77
Question of fact, is, 77
Sudden impulse is not, 79

Naval service, persons in, position of, 156
Neglect of children, 216–219
Court may vary order in cases of, 216
Negligence of master, effect of, 71
New trial, judge cannot grant, under form of review, 226
Notices in arbitration proceedings, forms of, 357–370
Notice of accident, 91–97
Absence from United Kingdom, 92, 96
Cases on, 93, 94
Effect of inadequate, 94
Effect of mistake in, 92, 97
Of industrial disease, 149
Requirements of, 93
Seamen, by, 138
To be given as soon as practicable, 95
Who to give, 95

Digitized by Google

Obstruction of medical examination, 212, 220
"On, in, or about premises," meaning of, 120–122
Operation, workman need not undergo, 197
Option, 72–75, 85
Exercise of, by infant, 75
Joining scheme is exercise of, 75
Need not be exercised in action against stranger, 129
Under sec. 1, subsec. 2 (b), 72–75
Under sec. 1, subsec. 4, 85
What amounts to exercise of, 74, 75
When to be exercised, 75
"Out of, and in course of, employment," *see* "Arising out of, and in course of, employment"
Outworker, 167, 184
Owner of ship, *see* Ship *and* Detention of ship

Partial Dependant, *see* Dependant
Parties to arbitration—
Where indemnity claimed—
Under sec. 4, 119, 287
Under sec. 6, 131
Under sec. 8, 146–148, 299
Where interests of dependants and legal personal representative are adverse, 102, 103
Partner, is not a workman, 174
Payment into court—
In case of death, 213
Form of, 364
Method of, 307–309
Money may be transferred to another court, 214
Money paid in, to be invested, 213
Of medical and funeral expenses not necessary, 214
Of weekly payments, 215
Advisability of, 214
Application for, by person under legal disability, 215
Form of, 400, 401
Rules as to, 307–309
Amended rules as to, 480
Personal injury by accident, *see* Accident
Persons liable for medical and funeral expenses—
Can recover compensation if no dependants, 195
Money need not be paid into court, 214
Pilots, position of, under sec. 7, 135, 142
Police force—
Meaning of, 184
Member of, is not a workman, 167
"Port," meaning of, 188

Digitized by Google

Post Office Savings Bank—
Deposit in, 219, 220
Investment in annuity through, 219, 220
Posthumous child, 181
Preferential payment, 123–127
Of compensation when employer bankrupt, 123
None when employer insured, 123
Not to exceed £100, 124
Position under Stannaries Act, 124, 127
Preferential Payment in Bankruptcy Acts, 126, 127
" Premises, on, in, or about," meaning of, 120–122
Presumption that wife is a dependant, 178, 180–182
" Principal," 80, 112–122
In agricultural work, 117
Meaning of, 113
On, in, or about premises, 120–122
Right of workman against, 117
Right to be indemnified, 118
Trade or business of, 115
" Work undertaken " by, 113–115
And *see* Sub-contractor
Proceedings—
For enforcing award, 317
Meaning of, 88, 102
Who to take, 102

Question—
Settled by agreement, 88
Settled by arbitration, 88
What is, 82
Question of law—
Appeal from judge on, 289
Submission of, to judge, 288
Form of notice of, 375

Redemption of weekly payment, *see* Lump sum
Register, special, 88, 322
Form of, 415
Of proceedings under Act, to be kept, 88
Rules as to, 322–325
" Registered British ship," definition of, 187
Registrar of county court, duties of, 86–89
Investment of money paid into court, 219
Registration of memorandum of agreement, 247–255
Special register, 88, 322
Registrar of Friendly Societies, *see* Scheme
Registration of memorandum, *see* Memorandum of agreement

Digitized by Google

Remuneration of workman—
If exceeding £250 per annum, excludes from Act, 167
How to be calculated, 168
Repeal of Workmen's Compensation Acts, 1897 and 1900, 190
Residence abroad, *see* Workman residing abroad
Returns as to amount of compensation, *see* Employer
Review of weekly payments, 225–229
Claim for, cannot be joined with claim for redemption, 228
If payments terminated on, no further review possible, 226
May be antedated, 227
May take place on request of either party, 225
May take place out of court, 227
Must be alteration in circumstances before, 226
What amounts to alteration in circumstances, 226
Where workman under 21 at date of accident, 225–228
Risks incidental to Employment, *see* "Arising out of, and in course of, employment"
Royal Household, head of department in, to be deemed employer, 156

Sailors, *see* Seamen
Scale of compensation, *see* Compensation
Scheme for contracting out of Act, 24, 104–111
Acceptance of, is exercise of option, 75, 110
Ballot, opinion of workmen to be ascertained by, 104
Benefits to workmen under, 104, 106
Certificate of, 105, 107
Difference from old Act, 109
Division of money held for purposes of, 108
Duties of Chief Registrar of Friendly Societies, 43, 104, 187
Provisions of, 104, 106
Regulations made by Chief Registrar of Friendly Societies, 106, 421–433
Fees payable, 422
Forms—
Application for certificate, 423
Application for certificate for partial amendment, 429
Application for recertification, 426
Application for renewal of certificate, 430
Complaint by workman, 432
Declaration verifying ballot, 425
Renewal of certificate, 105, 107
Revocation of certificate, 105, 108
Workman can retire from, 107
Workman need not join, 107
Schemes under Workmen's Compensation Act, 1897, 187–189
Effect of this Act on, 187
Effect of not recertifying, 188

Digitized by Google

Schemes under Workmen's Compensation Act, 1897, *continued*—
Position of workman who joins before recertification, 189
Recertification of, 188
Requirements for recertification, 188
Scientific chemist, position of, 175
Scotland—
Appeal to House of Lords from, 265
Application of Act to, 186
Application of Sched. II. to, 264
Seamen, 20, 133–142
Application of Act to, 133
Apprentices to sea service, 133, 136
Burial expenses of, 134, 140
Claims for compensation by, 133
Crew of fishing vessel, 135, 142
Definition of, 136
Evidence of accidents to, taken abroad, 134, 139
Forms in proceedings by, 341–347
Masters of ships, position of, 136
Notices by, 133, 139
Modifications of Act in application to, 133–135
Naval service, persons in, position of, 156
Notices by, how given, 133
Pilot, position of, 135, 142
Position of, under old Act, 136
Rules in proceedings by, 294
Where ship lost, position of, 135, 141
Secretary of State, *see* Home Secretary
Security, *see* Detention of ship
Security for costs in Court of Appeal, 241–243
Amount of, 241
Duty of appellant to offer, 242
Trades Union, case fought by, 241
Ordinary rule applies, 241
Exceptions, 241, 242
Where poverty caused by accident, 241
Serious and permanent disablement, *see* Disablement
Serious and wilful misconduct, *see* Misconduct
Servant, distinguished from independent contractor, 172–175
Sheriff Court (Scotland) Act, sec. 52, 265
Ship—
Definition of, 138, 163
Detention of, 160–168
Application for, how made, 162
Forms for, 375–383
Person giving security to be defendant, 162
Rules for, 295–298
Security accepted, 162

Digitized by Google

Ship, *continued*—
Distinction between vessel and, 188
Owner of, when liable to pay compensation, 82, 162
Presumption of loss of, 141
"Registered British," definition of, 187
Shipowner—
Claim by master against, how made, 139
Indemnity of, by owner of ship in fault, 134
Limit of indemnity, 135, 140
Liability to pay compensation not limited, 134, 140
Shipowners' Negligence Act, 161
Soldier, position of, 156
Solicitor—
Costs of, 260, 261, 314, 409
Undertaking by, on detention of ship, 162, 297
Special register, 88, 322–325
Form of, 415
Of proceedings under Act, to be kept, 88, 322
Rules as to, 322–325
Stannaries Act, sec. 9, 124, 127
Stranger, 24, 128–132
Change from old law in action against, 129
Circumstances under which employer is indemnified by, 128, 131
Option need not be exercised in claim against, 129
Workman cannot recover against employer and, 129, 130
Workman may sue both employer and, 129
Sub-contracting, workman may sue principal in cases of, 80, 112–122
Agricultural work, proviso as to, 112, 117
Difference from old Act, 113
Object of section, 113
Principal may seek indemnity from sub-contractor, 118
"Undertaken," meaning of, 113–115
Where work for purposes of trade or business, 115
Where work "on, in, or about premises" of employer, 120–122
Superannuation Act, sec. 1, 157
Surgeon, *see* Certifying surgeon
Suspension from employment, *see* Industrial disease
Suspension of payments during obstruction of examination, 282

Taxation of costs, 244–246, 260, 261
Change from old law, 245
Procedure on, 245
Review of, by judge, 244, 313
Rules dealing with, 312
Third parties, *see* Parties to arbitration
Tips may form part of weekly earnings, 208
Tort of stranger, how far "arising out of employment," 65, 66

Digitized by Google

Total dependant, *see* Dependant
Trade or business—
Meaning of, 115, 171
Sub-contracting for, 115
Where employment is casual, 167
Work of local authority is, 184
Treasury, duties of, under Act, 44
Tribunals under Act, 33, 285–287
And *see* Arbitration
Trustee in bankruptcy of workman—
Acquires no right to weekly payments, 282

"Undertaken by principal," meaning of, 113–115
"Undertaker," meaning of, in Workmen's Compensation Act, 1897, 17, 113

Variation of order of court, 216–219
Forms for, 402
In cases of alteration of circumstances, 217, 218
In cases of neglect of children, 217
Position as to, under old Act, 218
Rules on application for, 310
Weekly earnings, *see* Average weekly earnings
Weekly payment—
Amount of, 195–197
Fixing of, may be adjourned, 69, 70
Benefits outside Act to be considered in fixing, 209
Cannot be assigned, charged, or attached, 282
Costs not to be set off against, 282, 260
Discretion to be exercised in fixing, 196
Does not pass to trustee in bankruptcy, 282
Full amount of loss of earnings may be awarded, 196
Memorandum of, when to be registered, 247–255
Not to exceed 50 per cent. of earnings, 195
Payment into court of, 215
Redemption of, 229–231
Review of, 225–229
Wholly dependant, *see* Dependant
Wife, presumption of dependence of, 178, 180–182
Window cleaner, position of, 170
Workman, 19, 166–176
Absence of, from United Kingdom, *see* Workman residing abroad
Bankruptcy of employer, rights of, on, 126–127
Casual nature in employment of, 169–171
Charwoman, position of, 169
Crown, persons in service of, 156
Definition of, 166

Digitized by Google

Workman, *continued*—
Distinction between independent contractor and, 172–174
Legal personal representative of, 176
Manager of coal mine, position of, 175
Manual labour by, 175
Member of employer's family is not, 166, 171
Member of police force is not, 166, 184
Outworker is not, 166, 184
Partner is not, 174
Persons earning more than £250 per annum are not, 166, 168
Persons in naval and military service are not, 156
Remuneration of, how calculated, 168
Scientific chemist, position of, 175
Where services of, are let on hire, 165, 166
Window cleaner, position of, 170
Workman residing abroad, 231, 232
Ceases to be entitled to weekly payment, 231
Unless incapacity permanent, 231
Certificate to be given to, 231
Forms to be used where, 402–408
Rules as to, 310
Amended rules as to, 488
Workmen's Compensation, 1897, 16–18
Application of, 17
Defects of, 18
Improvement in law effected by, 17
Repeal of, 190
Text of, 519–531
Workmen's Compensation Act, 1900, 18
Application of, 18
Repeal of, 190
Text of, 532
Workmen's Compensation Forms, 1907, 327–416
Addition of respondents, 366
Admission of liability, 362
Answer by respondent, 359
Applications for arbitration, 327–357
Application to vary order, 402
Award, 370
Certificate under sec. 1, sub-sec. 4, 392
Detention of ships, 375
Execution, 409
Industrial diseases, 351–355
Medical referee, 398–398
Memorandum of agreement, 385–392
New arbitrator, 384
Obstruction of examination, 399

Digitized by Google

Workmen's Compensation Forms, 1907, *continued*—
Payment into court, 364, 400, 401
Register, 415
Solicitor's costs, 409
Special case, 375
Submission to award, 368
Weekly payments, 365
Workman residing abroad, 402–408
Workmen's Compensation Rules, 1907, 271–326
Answer by respondent, 288
Appeals, 318
Appearance of parties, 293
Application for arbitration, 279
Appointment of arbitrator, 281
Award, 290
Certificate under sec. 1, sub-sec. 4, 304
Change of court, 320
Costs, 312–316
Court, 319
Detention of ships, 295
Execution, 316
Explanatory memorandum, 271
Filing documents, 321
Fixing day, 291
Indemnity under sec. 4, 287
Indemnity under sec. 6, 288
Industrial diseases, 298
Insurers, 294
Judge to take notes, 294
Lump sum, 310
Medical referees, 304, 325
Memorandum of agreement, 301–304
New arbitrator, 300
Obstruction of examination, 307
Parties to arbitration before arbitrator, 278
Parties to arbitration before judge, 278
Payment into court, 284, 307–309
Procedure on arbitration, 281, 291, 292
Question of law, 292
Seamen, 294
Service on respondents, 282
Special register, 322
Submission to award, 284
Suspension of proceedings, 307
Third party procedure, 290
Variation of order, 310
Workman residing abroad, 310

Digitized by Google

Workmen's Compensation Rules, 1906, 479–491
Explanatory memorandum, 491
Forms, 484–490
Industrial diseases, 479
Parties to arbitration, 479
Payment into court, 480
Workman residing abroad, 483

Digitized by Google

The Gresham Press,
UNWIN BROTHERS, LIMITED,
WOKING AND LONDON.

Digitized by Google

Digitized by Google

RETURN TO ⟶ **CIRCULATION DEPARTMENT**
202 Main Library

LOAN PERIOD 1 **HOME USE**	2	3
4	5	6

ALL BOOKS MAY BE RECALLED AFTER 7 DAYS
1-month loans may be renewed by calling 642-3405
6-month loans may be recharged by bringing books to Circulation Desk
Renewals and recharges may be made 4 days prior to due date

DUE AS STAMPED BELOW

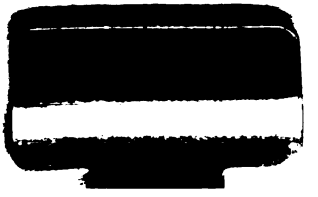
NOV 10 1980 69

RECEIVED BY
OCT 20 1980
CIRCULATION DEPT.

UNIVERSITY OF CALIFORNIA, BERKELEY
FORM NO. DD6, 60m, 3/80 BERKELEY, CA 94720

Digitized by Google

YC 85850



Digitized by Google

Digitized by Google